1953 **K** File No. Civ A A (Tenancy) 53 pt II

Legal Dept pt II

E BRANCH

Subject:—

Civil Appls and Rulings regarding Tenancy matters

Previous ppr pl pt I

P=615

E

File No. CIV A A (Tenancy) 1/53 pt II

Gen. 194 e.

1 & C

In the High Court of Judicature at Bombay

Special Civil Application No. of 1953.

(Under Article 227 of the Constitution of India).

Dist:- Belgaum.

Bhagubai kom Balwant Monite
of Malikwadi, Taluka Chikodi,
District Belgaum. Petitioner
(Ori. Opponent).

Vs.

1. Krishna Narayan Koli, residing at Malikwadi, Taluk. Chikodi, District Belgaum.
2. Dattatraya Vasudeo Adake of Kolhol, Taluka Chikodi, District Belgaum.
3. K.B.Wassood w.
4. H.G.Monani.
5. H.S.Dikshit

Nos. 3 to 5 President and Members respectively of the Bombay Revenue Tribunal, Secretariat, Bombay. Respond

Claim Rs .200 for Jurisdiction.

The humble petition of the petitioner abovenamed,

Most respectfully sheweth:-

That Survey No.49/1 and 2 at Malikwadi in Chikodi, Taluka, belonged to Opponent No.2 and was held by one Balu Narsing Koli as a protected tenant. Balu died on 23-1-1949 and Your Lordships' Petitioner who was a co-tenant with the deceased Balu continued to cultiv the land. Opponent No.1, however, alleged that he was a undivided brother of the deceased Balu and was entitle to be a protected tenant by survivorship.

2. That on 13--4-1949 Opponent No.2 the landlor filed an application (Tenancy Case No.324 of 1949) by

the Tenancy Avval Karkun at Chikodi,making Your Lordships' Petitioner and Opponent No.1 parties and praying that Your Lordships' petitioner be declared to be a protected tenant.

3. That on 4--6-1949 the Tenancy Avval Karkun held that Opponent No.1 was not an heir of the deceased Balu and that Your Lordships' Petitioner was a co-tenant of the deceased protected tenant was entitled to be a protected tenant.

4. That Opponent No.1 preferred an appeal to the Prant Officer,Chikodi Prant. The Appellate Court in TNC Appeal No.172 of 1949 reversed the finding of the Trial Court and held that neither Opponent No.1 nir Your Lordships' Petitioner was entitled to be a protected tenant. The decision of the Prant Officer dated 10-12-1950 is affixed herewith on affidavit as a certified copy of the same could not be obtained.

5. That in the meanwhile on 21-6-1949,Opponent No.1 filed a Civil Suit No.192 of 1949 in the Court of the Civil Judge,Junior Division at Chikodi, for a declaration that he and Balu were undivided and that after Balu's death the tenancy had come to him by survivorship and praying for an injunction against Your Lordships' Petitioner. The suit was dismissed on the ground,inter-alia that he was not an undivided brother of Balu The decision of the Trial Court was confirmed in appeal by the learned District Judge on 15-4-1953.

6. That against the decision of the Prant Officer Opponent No.1 preferred a Revision to the Bombay Revenue Tribunal.The Tribunal on 23rd April 1951 remanded to the Tenancy Avval Karkun an issue as to whether the land in dispute was held by the deceased Balu in his independant capacity or on behalf of his joint family,including his brother, the present Opponent No.1. Your Lordships' petitioner had no notice of this order of remand and had nobpportunity

-ship which has not at all been included in it.

(c) That the Tribunal erred in not following the principles of natural justice and accepting a finding given by the Mamlatdar when the petitioner had no opportunity of being heard.

(d) That the Tribunal erred in law in not at all considering the Judgment of the Civil Court which was inter parties and which held that Opponent No.1 was not an undivided brother of the deceased protected tenant.

(e) That grave injustice is caused to the petitioner by the decision of the Tribunal.

11. The petitioner further prays that pending the hearing and final disposal of the present application the execution of the order of the Tribunal be stayed on the following grounds among others:-

(i) That the petitioner who is in possession of the land and who has cultivated on the land, will suffer an irreparable loss if the possession is taken away from her.

(ii) That it will be a great hardship on the petitioner to be deprived of the possession of the suit land.

And for this act of kindness the petitioner as in duty bound shall ever pray.

Bombay.
11th August 1953. Advocate for the petitioner.

I, do hereby on solemn affirmation state that what is stated above is true to the best of my knowledge and belief.

Bombay.
11th August 1953.

of placing her evidence before the Mamlatdar.

7. That on 12th May 1952 a notice was issued to Your Lordships' Petition by the Bombay Revenue Tribunal calling upon her to submit a Written statement showing cause why the Opponent No.1's "application be not allowed particularly on the ground that the deceased protected tenant Balu Narsang Koli, the brother of the applicant was cultivating the land at the time of his death on behalf of his joint family including the applicant according to the finding certified to the Tribunal by the Mamlatdar of Chikodi."

8. That Your Lordships' Petitioner sent her Written Statement and also the certified copy of the Judgment of the Civil Court in which it was held that Opponent No.1 was not an undivided brother of the deceased Balu Narsang Koli, the protected tenant.

9. That the Bombay Revenue Tribunal by its Order No.O-230 of 1953, dated 8th April 1953 allowed Opponent No.1's application in Revision and reversed the order of the Prant Officer and declared that the Opponent No.1 be recognised as a protected tenant of the disputed property.

10. That being aggrieved by the aforesaid decision of the Bombay Revenue Tribunal, dated 8th April 1953, the petitioner most humbly begs to move this Honourable High Court under Article 227 of the Constotution of India, on the following grounds among others:-

(a) That the decision of the Bombay Revenue Tribunal is ex-facie erroneous in law.

(b) That the Tribunal has erred in going beyond the provisions of Section 40 of the Bombay Tenancy and Agricultural Lands Act, 1948 and imparting an heirship by survivor

IMMEDIATE

No. 18830/E
Legal Department,
Bombay Castle (Bombay No.1) 16 Sep 1953

To

The Collector of Belgaum,
Belgaum.

Subject: Special Civil Application No. 1560/53.

Sir,

I am directed to invite your attention to the letter from the Government Pleader, High Court, Bombay, No. 6933, dated the 9th Sept. 1953, endorsed to you on the above subject and to request you to forward a copy of your report under rule 71(2) of the Law Officers' Rules, to this Department immediately.

for Secretary to Government.

RVS.15/9. Copy with a copy of the petition forwarded with compliments to :-

The Revenue Department with reference to Legal Department circulars. No. 9588/E dated 23-4-1953.

IMMEDIATE

No. 18830/E
Legal Department,
Bombay Castle (Bombay No.1) 16 Sept. 1953.

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The Collector of Belgaum,
Belgaum.

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for Secretary to Government.

RVS.15/9. Copy with a copy of the petition forwarded with compliments to :-

The Revenue Department with reference to Legal Department circulars. No. 9588/E dated 23-4-1953.

No. 5097

7 [illegible] 53

Office of the
Government Pleader, High Court,
Bombay, 9th July 1953.
10th

From

Shri H.M.Chokai.B.A.(Hons)LL.B.
Government Pleader, High Court.

To

The Collector of Kharwar,
at Kharwar.

Subject:- Spl.Civil Application No. of 1
Bhimrao Bisto Vs.B,R,T,& ors

Sir,

With reference to the above subject, I have the hon to send herewith a copy of the above application with a request to send us affidavit of the authority concerned (wi five copies thereof) along with detailed instructions and original case papers.

THE SECRETARIAT-GOVERNMENT
LEGAL DEPARTMENT
File No. 16895
Sub No. F.
Date 13/7/53

The above application is likely to come up for hearing on Monday the 27th instant.

L.D.
11 JUL 1953

Yours faithfully,
V. J. Desai
for Government Pleader, High Court.

Encl.

Copy along with the copy of petition forwarded with compliments for favour of information and necessary instructions to;

No. 5098

1) The Remembrancer of Legal Affairs, Bombay.

No. 5099

2) The Secretary Bombay Revenue Tribunal, Bombay.

[illegible]
R.D. may be requested to state whether it is necessary to put in appearance on behalf of the B.R.T.
PJK
10/7.
Sd
Ron 10/7

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Special Civil Application No. of 1953.

IN THE HIGH COURT OF JUDICATURE, AT BOMBAY.

District: DHARWAR.

1. Bhimrao Bisto (Adoptive father Martand) Desai, Hindu, 60 Pleader, and Agr. of Kundgal Dist: Dharwar.

2. Nagesh Lingo Desai, Hindu, 40, Agr. of Saunshi Mohal Kundgol Dist: Dharwar. ..... Applicants.

V/s.

1. Fatoobi w/o Sanmara Jesaheb Bhangi Muslim, 50, House-hold work, of Saunshi, Mohal Kundgol, Dist:Dharwar.

2. R.B.Wassoodew, Retired Judge of This Honourable Court, President of the Bombay Revenue Tribunal, residing at Bhalabhai Desai,Road, (Warden Road), B O M B A Y.

2. R.S.Dixit, Advocate (O...) High Court, Fort, Bombay.

3. T.L.Mohani, I.C.S., Director of Local Authorities, Southern Divisions and Member Bombay Revenue Tribunal, Belgaum. ..... Opponents.

Application under Article 227 of the Constitution of India.

The humble petition of the Petitioner above-named. most respectfully showeth:-

1. The applicant No. 1 is the owner of the following lands, situated at Saunshi, Mahal Kundgul, Dist: Dharwar:

....

S.No.	Area.	Assessment.
536	3-5	12-12
538	22-18	81-8

2. The village Saunshi where the lands are situated, was formerly in the Jamkhandi State, which has since merged in the Indian Union. The Bombay Tenancy Act (Act XXIX of 1939) was made applicable to such areas as from 15-9-1948 as per Bombay Government Notification and subsequently modified as from 11-8-1948. The Bombay Government later on issued Ordinance No.VI of 1949 and confirmed the same by the Bombay merged States (Laws) Act, ACT IV of 1950, whereby the Bombay Tenancy and Agr. Lands Act(ActLXVII of 1948) was made applicable to the merged States, with certain modifications with regard to dates of applicabilities of Section 3A and 4 of the Bombay Tenancy and Agri. Lands Act. According to the Ordinance No.VI of 1949 and the merged States (Laws) Act IV of 1950, under section 3'A of the Bombay Tenancy Act, every tenant shall, from 11th August 1949 be deemed to be a protected tenant and his rights as such protected tenant be entered in the records of rights.

3. The Landlord, applicant No.1 had let out these two lands to one Jangli Saheb in 1946-47 and 1947-48. In 194 -49, he let out the lands to one Ningangouda Chanvir-Gouda Patil of Saunshi under a Kabuleyat dated 22-8-1948, for period of one year, upto 31st March 1949. It was during th

13 48/7 33/

husband of opponent No. 1 Sannarajeshaheb. He died on 15-2-49, and immediately Ningangauda dispossed the opponent No. 1 of the of the lands. Ningangauda further sublet the two lands to Applicant No.2 for 1949-50 and he was in actual cultivation thereof.

4. The opponent No. 1 filed Tenancy Application No. 419 of 1949, against the applicants in the court of the Mahalkari of Kundgul, praying that the land should be restored to her on the ground that her husband was a tenant in 1948-49 The learned Mahalkari granted the application on the ground that Sanna Rajesaheb had lawfully cultivated the land in the year 1948-49, had therefore became a "protected tenant" and was thus entitled to restoration of the lands to her. The said order is annexed herewith as Ex."A".

The applicants filed Tenancy Appeals Nos. 56 and 58 in the Court of the Collector of Dharwar against the decision of the Mahalkari of Kundgul, but they were dismissed on 31-12-51 on the ground that Sannarajesaheb had become a protected tenant of the lands under section 3-A of the Bombay Tenancy Act. A copy of the said order is appended herewith as Ex."B".

5. The applicants filed revision applications Nos. HRT 6993 and 7169-N of 1952 before the Revenue Tribunal Bombay, But they too were summerily dismissed on 10-7-1952 and intimations thereof was given to the applicant No.2. The same is produced herewith as Ex."C".

The applicants thereupon filed Review applications before the Revenue Tribunal, pointing out once again that under Section 3-A of the Bombay Tenancy Act, as modified by the merged states (laws) Act, the relevant year would be 1949-50

15 1135 24

and not 1948-49, because for claiming the benefit of section 3-A, a person has to be a tenant on the land on 11-8-1949, before his name can be entered in the R of R as a protected tenant, and that the Tribunal had lost sight of this provision of law. The applicants also pointed out that the sub-tenancy of Gunnarajesaheb had come into existence some time after 22-8-1948, because the tenancy of Ningangauda itself had come into existence of that A day, and this creation of sub-tenance being after 11-8-1948 when the Tenancy Act had made applicable to Saundhi, the sub-tenancy itself was illegal and contrary to law, and therefore Gannarajesaheb could in no case acquired the rights of the lawful tenant, much less of a protected tenant. In fact the sub-tenancy of Gannarajesaheb has been entered into R R for the last time on 15-11-1948. A true translation of the same is annexed herewith as Ex.D.

6. The Revenue Tribunal however, has rejected the Review application also and intimated to the rejection to the applicants by their letter dated 26-3-1963 which reached the applicants No. 1 on 2-4-1963 along with a copy of the order passed on the review applications. The same is kept herewith as Ex.E.

Being aggrieved by the said order, the applicants humbly beg to approach this Honourable Court under Article 227 of the Constitution of India on the following among other grounds

1. The order of the Bombay Revenue Tribunal are contrary to law and evidence.
2. The said orders are based on an

17 39

wrong interpretation of section 3-A, of the Bombay Tenancy and Agricultural Lands Act (Act LXVII of 1948) as modified by the merged states (laws) Act IV of 1960, and grave injustice has been caused to the applicants.

3. It was an error to have passed the Orders without an opportunity being given to the applicants or their advocates to be heard.

4. The rule in this respect, (rule No. 17) framed by th Revenue Tribunal, is contrary to the principles of natural justice and the provisions of the Civil Procedure Code should have been followed.

5. Rule No. 25, refers to the Civil Procedure Court, be applicable to the Revenue Tribunal is certain respect, but Rule 17 has xx wipped off the solutory provisions of C.P.C. regarding the hearing of appeals, Revision applications and Review applications.

6. It is an error to have held that Sannarajeshaheb was "protected tenant" as mentioned in the Bombay Tenancy and Agr. Lands Act (Act LXVII of 1948).

7. It should have been seen that the sine-que non for the application of the rule would be that such a person should have been lawfully cultivating the land on 11-8-1949 and/s that neither Sannerajesaheb nor opponent No. 1 was lawfully cultivating the lands in question on that date.

8. It should have been further seen that the sub-tenancy of Sanna Rajsaheb had commenced some time after 22-8-1948, when for the first time the lands were let out by applicant No. 1 to Ningangaudh, and that --

19 55 E 39

therefore the sub-tenancy itself was contrary to the provisions of section 27 of the Tenancy Act of 1948.

VII. Under these circumstances, the applicants humbly prays that this Honourable Court be pleased to exercise its powers of supervision over the Bombay Revenue Tribunal unde Art.227 of the Constitution of India, to call for the recor -s and proceedin s of the case, to set aside the orders of the Tribunal and dismiss the opponent No.1's application, by issuin a writ of certiorarior any other / suitable writ of directions.

VIII. The applicants further pray that execution of the Orders of the Revenue Tribunal & the lower courts be stayed pending hearing of this application.

And for this act of kindness, the applicants as in duty bound, shall ever pray.

Bombay dated

April, 1953.

Advocate, for the applicant.

I, Bhimrao Bisto Desai, applicant No. 1 do hereby state on solemn affirmation that what is stated above in par 1 to VII is true to my knowledge.

Dated:

April 1953.

....

D/7.7.

21 57 [illegible]

Ex. "A".

Copy of the order passed by Shri P.V.Chavan in Tenancy S.R.419/49.

Ten.S.R.419/49.

In the Court of Shri P.V.Chavan,

Mahal Kundgol.

Applicant: Patobi Sannarajeshheb Bhangi of Saunshi.

V/s.

Opponents: 1. Shri B.M.Desai of Kundgol

2. Shri Nagesh Lingo Desai of Saunshi.

Suit Land: S.No.536 and 537 of Saunshi.

Order.

In this the applicant contends that her husband Sannarjesaheb cultivated the suit lands since long till his death about ten months back i.e. in February 1949 when she was dispossessed of the suit lands and requests that they should be restored to her, she being the heir to the deceased Sannarajesaheb who is the protected tenant of the suit lands having cultivated them during 1948-49.

The applicant, being a Muslim lady was allowed to be represented by her brother Shri Mahommadgounsa Dawalsaheb - Tabhildar;.

The points at issue in this case are:-

1. Whether Sannarajesaheb the husband of the applicant cultivated the suit land during the year 1948-49 ?
2. Whether notice under section 40 of the B.T. and A.L.Act 48 was given to the applicant?
3. Whether the applicant is entitled to restoration of the suit lands?

My answers to all these points arein the affirmative, for the following reasons.

The applicant deposes (Ex.4) that the opponent No. 1 dispossess her of the suit lands and gave them to

23 43

the opponent No. 2 since the year 1949-50. Till then the lands were being cultivated by Sannarajesaheb for the last 30-40 years. Further, he states that though the lands were actually cultivated by Sannarajesaheb, the Kabylayats were executed by Janglisaheb for 1947-48, and by Shri Ninganagouda for 1948-49. This he says was -- by done as described by the opponent No. 1. The reason stributed was that formerly the estate was being managed by the elder brother of the opponent No. 1 while now there being partition suits Kabulayats in different names may help him in the suit. The deponents say has been corroborated by Shri Janglisaheb (Ex.6) and Shri Ninganagouda (Ex.7) Ex.7 further explains that he took the suit lands on lease for 1948-49 from the opponent No. 1 and sub leased it to Sannarajesaheb and on his death to the opponent No. 2. Entries have accordingly been made in V.F.XII(Ex.5A) and Shri Sannarajesaheb has been shown as sub-tenant and actual cultivator of the suit lands. But it is Ninganagouda has been shown as protected tenant being tenant of the suit lands in 1948-49. This is obviously incorrect. As per village records Sannarajesaheb being the actual cultivator of the suit land, should have been shown as protected tehant o the suit lands.

The opponent No. 1 states (Ex.8) that the suit lands were cultivated by Sannarajesaheb prior to 1946 He had leased the suit land to Janglisaheb for 1946-47 and 1947-1948 and thereafter to Ninganagouda. Sannarajesaheb had not cultivated it since 1946 and as such the applicants cultivation is untrue. He has produced Kabulayats as executed by Shri Jangalisaheb and Shri Naingangaouda(Exs.6A and 7A) the execution of which has been admitted by Ex.Nos. 6 and 7. Ex . 6-B is an order of the Court wherein Ex.6 amiably paid the rent to the opponent No. 1 and got the suit filed by him recorded. This is a natural consequences of the Kabulayat set

got executed from him. Ex.6C shows that Ningangagoudas had filed a suit against the applicant for the recovery of the rent due from her husband for the year 1948-49. These documents when studied carefully go a long way to support the applicant's case rather that help the opponent to any extent. The opponent No. 1 has produced ~~xk~~ two witnesses (Ex.Nos. 9 and 10) to show that Sannarajesaheb has not cultivated the suit lands at any time during the last 4 5 years. But I consider that they are not independant ones and their demeneour in the Court confirms the view that they cannot be believed to say the truth particularly in this case. Moreover their evidence is un-corroborated and as such credence cannot be placed against the documentary evidence in this case. Thus the records and evidence in this case established beyond doubt that Sannarajesaheb cultivated the suit lands during 1948-49 and as such he is the protected tenant of the suit land as per provisions of Section 3A of the Bombay Tenancy (amended)Act 1946 as applied to the Village.

The entry of Shri Ningangagouda's name as a protected tenant was made in V.F.VI on 12-2-1950 and was certified by the T.A.K. on 6-3-1950 when the present application was pending on his file. (Ex.4-A).

When once the applicant is held as a protected tenant of the suit land section 40 of the B.T. and A. L.Act through responsibility on the landlord to continue the tenancy to the heir of the deceased. The opponent No. 1 states that no such notice was given to the applicant widow of the deceased protected tenant and explains it by saying that Sannarajesaheb was not his tenant, which argument holds little wind. Even Niganagouda the alleged tenant of the opponent No. 1 has not given any notice to the applicant. Under such circumstances the leasing of the land to the opponent No. 1 without consulting the heirs of the deceased protected tenant is legal. The opponent No. 2 states (Ex.10) that he has taken the land from lease from Ninganagouda for the

for the last 2 years and that Sannarajesaheb has not cultivated it for the last 4 - 5 years Naturally enough he has to say so as otherwise his interest would be affected. It is true that sub-lease would give right to be landlord to terminate the tenancy of the tenant and the sub tenant, but in this case the interest of the protected tenant and his heir are effected and to safe guard the same, the applicant heir of the deceased protected tenant is entitled to restoration of the suit land.

In view of the above facts it is directed that the suit lands should be restored to the applicant from the possession of the opponent No. 2 and continued of the same terms and conditions on which it was held by Sannarajesaheb. Though the suit lands are liable to be restored immediately in the interest of equity and justice it is directed that the possession of the suit lands should be restored to the applicant after the crops are removed.

Sd/- Y.P.Chavan.
Mahalkary Kundgol.

Dated: 20-1-1951.

True copy.

Sd/- Honkalshi.
for Mahalkary Kundgol.

...

D/7.7.

29 49

Ex. "B"

In the Court of the Collector of Dharwar.

No. T.E.N.A.P. 56 and 58.

Dharwar, dated the 31st Decr. 1951.

Appellants:- (1) Shri Bhimrao Bisto (Adoptive father Martand) Desai of Kundgol.

(2) Shri Nagesh Lingo Desai of Saunshi.

Respondents: Shrimati Fatoobi Kom Sannarajesaheb Bhangi of Saunshi.

Suit Lands : S. No.535 and 537 of Saunshi.

Order appealed against:..... Mahalkari Kundgol's No.T.E.N.A.P.419/49. of 20-1-1951.

Heard: The pleaders for the appellants and the Respondents.

O R D E R:

1. Appellant No. 1 is the landlord, appellant No. 2 is the ordinary tenant and the respondent is the widow of the deceased. P. Tenant of the suit lands. The respondent approached the Mahalkari Kundgol on 9-1-1950 for restoration of possession of the suit land scontending that she was the heir of the deceased protected tenant Sannarajesaheb Bhangi and that she was dis-possessed of the land immediately after the death of her husband in Febr. 1949, without an order from the Mahalkari under the provisions of the B.T.and A.L.Act 1948. The Mahalkari after enquiry directed restoration of the lands to her, in his order No. T.E.N.A.P.419/49 dated 20-1-1951. Being agreed by this order of the Mahalkari, the aprellants have now approached the Collector by putting two separate appeal applications.

2. The main contentions of the appellants are:-

1. That the Bombay Tenancy Act of 1946 was made applicable to Kundgol Mahal (merged area) on 11-8-1948.

ii. That Shri Hingangouda's name was entered in the R/R and P. tenant in respect of the suit lands in accordance with the provisions of the aforesaid Act;

31 3/51

that the respondent had failed to give notice to the appellant within on year of the application of the Act to Kundgol;

iv. that the application for restoration of possession of lands was time barred and that it should have been rejected, and that the suit was heard by the T. E. K. and only order was passed by the Mahalkari is therefore not legal.

3. There is no dispute ~~regarding~~ regarding the date of appli-tion of the Bombay tenancy Act to Kundgol Mahal. In the R/R one Ningangaouda Patil is shown as P.tenant in respect of these lands. This Ninganagouda, the appellants contend was on the lands on 11-8-1948 when the B.T. Act was made applicable to Kundgol Mahal and that he is therefore the P. Tenant of the lands. According to the Kabulayats executed by Shri Ninganagouda the lands were leased to him by the landlord for the year 1948-49. His name has been accordingly shown in V.F.VII-A for that year. He, however did not cultivate the lands personally and sub-leased them to Shri Sannarajesaheb, the husband of the respondent for that years. The name of Shri Sansarajesaheb appears as sub-tenant of Shri Ninganagouda in V.F. ~~XXX~~ VII-A, Shri Ninganagouda has admitted the facts. It is therefore, beyond a shadeo of doubt, that Shri Sannarajesaheb was actually on the lands during the year 194.-49. He therefore becomes the protected tenant of the suit lands under section 3-A of the Bombay Tenancy Act. The name of Shri Nanganagouda entered as P. tenant is obvilusly incorrect and the Mahalkari was right in holding Shri Sannarajesaheb as P tenant The appellant's contention that Shri Sannarajesaheb is not th P. T. is far from true, and is therefore, unfounded.

4. As Shri Sannarajesaheb was P tenant under section 3-A of the B.T. Act, there is no question of issuing a notice to the ~~appeal~~ appellant within one year of the application of the

to Kundgol state expressing his willingness to cultivate the lands, on the same terms and conditions on which he held. The provisions of section 4(2) of the B.T. Act are inapplicable in this case. The provisions of section 40 of the B. T. and A. L. Act specially lay the owners of continusing the P. Tenancy to the hears of the deceased tenant, on the landlord.

5. The appellants urge that the applications of the respondent for restoration of possession of the lands was time barred and that the lower court should have rejected the application. The dis-possession in this case has taken place in Febr. 1949 as admitted by the respondent. The claims for restoration is made on 9-1-1950. The limitation of time has now been extended to two years under section 29(1) a by Bombay Tenancy and A.L. (third amendment Act, 1951 and made applicable to all cases and appeals pending before the Court on the date on which the Act mentioned above came into force. The appellants contention with regard to the limitation of time fails.

6. The appellants also urge that the order of the Mahalkari is illegal on the ground that it was not heard by him and his order is based on the evidence recorded by the T.N.K.Kundgol, . There is no substance in this argument. The Mahalkari was perfectly right in passing the orders in this case.

7. For this the reasons discussed above, the appeals fails The stay granted under No. T.N.N.A.P. 55 of 51 of 26-3-1951 is vacated.

Sd/- F.J.Rebello.
Collector of Dharwar.
Sd/-
for Collector, Dharwar.

To,
the parties.

D/7.7.

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Ex. C.

Before the Bombay Revenue Tribunal.

Thurs - day the 10th day of July 1952.

Applications for revision No.BRT 6993
and 7169 of 1952.

Under the provisions of section 76 of the Bombay Tenancy and Agricultural Lands Act, 1948, from the Appellate Order of the Collector of Bombay.

Shri Nagesh Lingo Desai
Shri Shimrao Disto (adoptive fat er Martand Desai.)
of Saunshi, Mahal Kundgol, District: Dharwar.... -Applicants.

V/s.

Shrimati Fatoobai Koa Gannarajesaheb
Bhangi of Saunshi Mahal Kundgol, Dist: Dharwar. Opponent.

The applicant were defendant on action for restoration of possession the lands in dispute before the Mahalkari of Kundgol which was decided on 20th January, 1951. The appeal No. U. 56 and 58 on the file of the Collector of Dharwar were decided by the Collector of Dharwar on 31st December 1951, who confirmed the order of the first instance. The revision application against the lower appellate Court's order having been received by the Secretary Bombay Revenue Tribunal, and referred to by him to the official Member and forwarded to the President through the Hon Official Member of the Bombay Revenue Tribunal, the Tribunal passes the following order under rule 6(1) of the Bombay Tenancy and Agricultural Lands (Tribunal) Procedire rules 1949.

The revision application are rejected.

This 10th day of July 1950.

Sd/-Secretary.
Bombay Revenue Tribunal .

Seal.

Copy to:- (1) the applicant's by name.

(ii) the collector of Dharwar; with spare copy for the Mahalkari, Kundgol.

Sd/-
Secretary.

Secretariat, Revenue Bombay Revenue Tribunal.
Department 10th July 1952.
Bombay.
D/7.7.

.....

37 A3 57

Ex. E.

No.B. .T.6993 (O/75/F.

Bombay Revenue Tribunal,
Secretariat, Bombay No.1,.
26th March 1953.

From

The Secretary Bombay Revenue Tribunal,
Bombay.

To,

(1) Shri Kegesh Lingo Desai,
(2) Shri Bhimrao Pisto,
of Saunshi Mahal Mundgol, Dist: Dharwar.

Subject: Bombay Tenancy and Agricultural Lands Act, 1948 / Revision application under the ...

Sir,

With reference to your application dated 6th August 1952, for review of the order of the Bombay Revenue Tribunal No. 6993 7169-N, dated the 10th of July 1952, I am directed to forward a certified copy of the Bombay Revenue Tribunal's order No. O/75, of 1953, dated 22nd January, 1953.

Yours faithfully,

Sd/-

for Secretary ,

Bombay Revenue Tribunal, Bombay.

Accompaniment: Copy of the Tribunal(r Order.

Copies with copies of the Tribunal's order.

Copy forwarded to:-

1. Shri .V.Dixit Non-official member Bombay Revenue, Tribunal.
2. Collector of Dharwar, with 3 spare copies of the Tribunal's order
3. The Director of Local authorities southern Division with 3 spare copies of the Tribunal's order.
4. Inspection Branch with 3 spare copies of Tribunal's order.

S.V.D./- 13-3-.

Sd/-

26/3.

Review application against the Tribunal's Order No. BRT 6993 and 7169Nof 1952, Dated 10th July 1952.

...

No. 90 75 of 1953.

Bombay 22nd January, 1952.

Read:

Review applications dated 6th August 1952 Shri Nagesh Lingo Desai of Saumshi and Shri Bhimrao Bisto Desai of Kundgol, Dist: Dharwar.

Order:-

These are two applications one by Shri Nagesh Lingo Desai and the other by Shri Bhimrao Bisto Desai for review of this Tribunal's order No. BRT 6993 and 7169 N dated 10th July 1952 summarily rejecting their revision applications against the orders of the Collector of Dharwar, dated 31st Decr. 1951 and the Mahalkary of Kundgol, dated 20th July 1951, directing the restoration of possession of the lands comprised of S.Nos. 535 and 537 of Saumshi to the opponent Shrimati Fatoobai Kom Sannarajesaheb Bhangi on the ground that she was wrongly evicted after her husband's death who was a tenant in his life time of the lands in dispute. There is no substance in these review applications which are accordingly rejected.

K. B. Wassoodew

President.

Bombay Revenue Tribunal.

M.G.Mohani.

Director of Local Authorities southern, Division and member of Bombay Revenue Tribunal.

B.S.Dixit.

Non-official Member, Bombay Revenue Tribunal.

.....

D/7.7.

No. 1531 1/E

Legal Department,
Bombay Castle (Bombay No.1), 18th July 1953.

To

The Secretary to Government,
Revenue Department.

Subject:- Spl. Civil Application No. of 1953.
Bhimrao Bisto Vs. B.R.T. & Ors.

Sir,

I am directed to forward herewith a copy of the petition filed by Shri Bhimrao Bisto Desai and another in the High Court, Bombay under Article 226 of the Constitution with request to state whether appearance on behalf of the Bombay Revenue Tribunal is necessary (cf. para. 2 of L.D. Circular 9588/E, dated the 23rd April 1953).

Yours faithfully,

for Secretary to Government.

Await response from RD

PTW
20/7

Subd.

For the reasons stated in RD note below it is decided that no appearance on behalf of the B. R. T. should be made. The Q. P. High Court may be informed accordingly

PTW
28/7
25/7

RDM 28/7

Civil Tenancy/IV

43

No. 8455

IMMEDIATE.

Office of the
Government Pleader, High Court,
Bombay, 28th October 1953.

From

Shri H.M.Choksi, B.A.(Hons)LL.B.,
Government Pleader, High Court.

IMMEDIATE

L.D. 30 OCT 1953

To

The Remembrancer of Legal Affairs,
Bombay.

Sub:- Special Civil Application No. 1051/53.
Bhimrao Bisto (Adoptive father Martand Desai)
V/s.
Bombay Revenue Tribunal, Nos. No. 2 to 4.
...

Sir,

With reference to your letter No. 16373/E dated 4th August 1953, on the above subject, I have the honour to state that the above application came up for hearing before their Lordships the Hon'ble the Chief Justice and the Hon'ble Mr. Justice Dixit on 6th October 1953 when the following order was passed.

SECRETARY TO GOVT. LEGAL DEPTT. File No. 2614/2 Date 31/10/53

Order.

Coram: Chagla C.J. & Dixit J.

" For the stated in the judgment the court sets aside the order of the Mamlatdar and direct that the matter should go back to him and he should consider in the light of this Judgment - whether Sanarajasheb was a protected tenant within the meaning of sec. 4; in other words, whether the cultivated the land per - sonally for not less than six years prior to the 1st April 1937 or six years prior to the 1st April 1944. If the Mamlatdar is satisfied that Sanarajasheb did cultivate the land for the period which is indicated, then he will hold that he was a protected tenant and the first opponent would be entitled to possession. If on the other hand, he comes to the conclusion that the first opponent fails to establish personal cultivation by -- -- Sanarajasaheb for the relevant period, then he will dismiss the application made by the First Opponent for possession.

Costs costs in the application."

Yours faithfully,

V. Kamerkar

for Government Pleader, High Court.

Legal Dept

In this case the L.P. High Court was instructed not to put in appearance on behalf of the D.R.T. The order passed by the High Court may be shown to R.D. copy of the judgment when received will be shown to R.D.

DSR 31/10

RN 31/10.

VOR to R.D No. 22228/E

31st. NOV. S. ~~Oct~~ 1953.

REV... 1953

F 23(10)(B)

BRT-135(B)

R.D.
BRT.

Seen and returned to the L.D.

12-11-83

13/11. US/II x Secy; BRT.

no to L.D. dated 16-11-88

This may be filed in civil ~~Appl~~ (Tenancy)/53 Part IV -/79 with ffs

DSR 19.11

RN 19/11

27794 E

19/11/53

Regd → Typist

DR some → DR typed → no to L.D. sent

16/11

45/339

Judgment recorded by the High Court in Special Civil Application No. 1051 of 1953 in the case Khimrao Bisto (Adoptive father Martand Desai, and mothers V/S Fatoobi W/O Sanmarajasaheb Bhangi and others.

==

Mr. V. V. Albal Advocate for the Petitioners.

Mr. V. H. Gumaste Advocate for opponent No.1.

Coram: Chagla C. J. & Dixit J.

Tuesday, 6th October 1953.

ORAL JUDGMENT (PER CHAGLA C.J.):-

The first petitioner is the owner of two lands bearing survey Nos. 536 and 537 situated in Saunshi in the Kundgol Mahal. This Mahal originally belonged to the State of Jamkhandi. Jamkhandi merged with the Union of India in 1948 and the old Tenancy Act was applied to Jamkhandi on the 11th August 1949. Subsequent to that the first petitioner let out these two survey numbers on the 22nd August 1948 to one Ningangouda. Ningangouda sublet these lands to one Sanaraja-saheb whose widow is the first opponent. Sanarajasaheb died in February 1949 and Ningangouda resumed possession of these two survey numbers. The first petitioner again let out these two survey numbers for the years 1949-50 to the same Ningangouda and Ningangouda sublet these two land tothe second petitioner The first opponent applied to the Mahalkari complaining that she had been dispossessed of the two survey numbers by the second petitioner, that her husband was a protected tenant, and therefore she should be restored to possession. The Mahalkari held that Sanarajasaheb was a protected tenant under Sec. 5A of the Act and ordered possession to be given to the first opponent as the heir of Sanarajasaheb. There was an appeal to the Collector and the Collector dismissed the appeal. A revision application was preferred to the Revenue Tribunal which summarily rejected the application, and an application for review met with the same fate.

47 347

Now, the only ground on which it has been held that Sanarajasaheb was a protected tenant was that he was actually on the lands during the year 1948-49, and the question that arises is whether this fact leads to the legal inference that Sanarajasaheb was a protected tenant within the meaning of the Act. Turning to the provisions of the Act, sec. 3A which is the relevant section provides that every tenant shall, from the 8th November 1947 (now in the case of merged States to which the Act was applied the date has been altered to the 11th August 1949), be deemed to be a protected tenant for the purposes of this Act and his rights as such protected tenant shall be recorded in the Record of Rights, unless his landlord has, prior to the aforesaid date, made an application to the Mahalkari for a declaration that the tenant is not a protected tenant; and the explanation says : "A person shall not be deemed to be a protected tenant if such person has been on an application made by the owner of the land as provided in Sec. 3A of the Bombay Tenancy Act declared by a competent authority not to be a protected tenant." It is clear that before sec. 3 can apply, the person who seeks a declaration as a protected tenant must be a tenant on the 11th August 1949. The scheme of the Act is that the position of all tenants who were actually on the land and cultivating land as tenants was crystalised and they were deemed to be protected tenants, unless the landlord made the necessary application and got a declaration to the contrary. In this particular case admittedly Sanarajasaheb was not a tenant on the 11th August 1949 and therefore sec. 3A can have no application. He was dispossessed or his widow was dispossessed on his death, in February 1949. Therefore if any section is applicable to his case at all it is sec. 4 which provides for tenants being evicted after the two periods mentioned there, 1st of April 1937 and 1st of April 1944, and who have been cultivating land for six years prior to the 1st of April 1937 and 1st of April 1944. Therefore, in order that Sanarajasaheb's widow can succeed, she would

have to establish (1) that her husband was evicted otherwise th by an order of a competent authority after the 1st of April 1937 or the 1st of April 1944, which in this case undoubtedly she can establish and (2) that he had been personally cultivat--ing the land for not less than six years either preceeding the 1st of April 1937 or the 1st of April 1944. The second fact has not been established by the first opponent. Both the Collector and the Mahalkari have merely proceeded on the basis that because Sanarajasaheb was a person cultivating land for the years 1948-49 that gave him the status of a protected tenant. That position is obviously erroneous.

Mr. Gumaste for the 1st opponent contends that Sec. 3A does not require that the person who is to be deemed to be a protected tenant should be a tenant on the material date. According to him it is sufficient that Sanarajasaheb was a tenant some time prior to the 11th August 1949 and all that sec. 3A does is to declare his status as a protected tenant from the 11th August 1949. Now, that construction is obviously untenable. Sec. 3A speaks of a tenant and not of any person and it is only a tenant who is to be deemed to be a protected tenant from a particular date. As we said before, reading Sections 3A and 4 the scheme of the Act is that tenants who were in possession of land on the material date, which in this case happens to be the 11th August 1949, were deemed to be protected tenants, unless the landlord took the necessary action. In the case of tenants who were not on the land at the material date and who had been evicted before that date, they could establish the status as protected tenants provided they satisfied the conditions laid down in sec. 4. There--fore the order of the Mahalkari and of the Collector is obvious--ly erroneous. Mr. Gumaste points out that although in the application the first opponent contended that her husband was a protected tenant under sec. 3A, in her deposition she has stated that Sanarajasaheb was cultivating the land for 20 or 30 years and he therefore wants the Mahalkari to reconsider

consider the rights of the first opponent from this point of view.

We will therefore set aside the order of the Mahalkari and direct that the matter should go back to him and he should consider in the light of this judgment whether Samarajasaheb was a protected tenant within the meaning of Sec. 4; in other words, whether he cultivated the land personally for not less than six years prior to the 1st April 1937 or six years prior to the 1st April 1944. If the Mahalkari is satisfied that Samarajasaheb did cultivate the for the period which is indicated, then he will hold that he was a protected tenant and the first opponent would be entitled to possession. If, on the other hand, he comes to the conclusion that the first opponent fails to establish personal cultivation by Samarajasaheb for the relevant period, then he will dismiss the application made by the first opponent for possession.

Costs costs in the application.

No. 7971

Office of the
Government Pleader, High Court,
Bombay, 14-10-1953.

From

Shri H.M.Chokai,B.A.(Hons.)LL.B.,
Government Pleader, High Court.

To

The Collector of Belgaum,
At : B E L G A U M.

Subject:- Special Civil Application No.1812/53.
Shri Murarrao Narsingrao Mutalik Desai.
-VS-
The Bombay Revenue Tribunal No.1 & Anr.

24659
E
15/10/53

Sir,

With reference to the above subject, I have the honour to send herewith one copy of the above application with a request to send me ~~and~~ affidavit (with six copies thereof) of the authority concerned along with detailed instructions and case papers so as to reach me by the end of this month.

The above application will come up for hearing on 9th November 1953 or thereafter.

Yours faithfully,

V. J Anan

for Government Pleader, High Court.

15 OCT 1953

No. 7972

Bombay, 14-10-1953.

Copy with a copy of the petition forwarded with compliments to the Remembrancer of Legal Affairs, Bombay for favour of information and necessary instructions.

SMW

A copy of the Petition may be forwarded to RD and the B.R.T for remarks with reg to L.D circular

JMW
26/10

SV

Rec 26/10

~~2955~~

(District- Kolhapur.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

SPECIAL CIVIL APPLICATION NO. 1512 OF 1963.

(Under Articles 226 and 227 of the Constitution of India.)

1. Shri. Hararrao Narshingrao Mutalik Desai of Bambalwad, taluka Chikodi, Dist. Belgaum. ....PETITIONER. (Ori. Landlord.)

xxxxxxx.Against.

1. Shri Shidu Gangaji Khabar of Gadhinglaj, Dist. ~~Kolhapur~~.Kolhapur.
2. Shri K.B.Vasseedev, M.A.LL.B., President Bombay Revenue Tribunal, Bombay.
3. Shri M.G.Memani, I.C.S, Director of Local Authorities, S.D. and Member, Bombay Revenue Tribunal, of Belgaum.
4. Shri R.S. Dikhit, Bar-at-Law, Non-official Member, Bombay Revenue Tribunal, Bombay... ....

OPPONENTS. (Ori. No.1 applicant R.No.1 Nos.2-4 are the President & members of the Bom. Rev. Tribunal.)

Claim Rs.200/- for process fees.

The Humble Petition of the Petitioner above-named.

MOST RESPECTFULLY SHOWETH :-

1. That the applicant is the owner of R.S.No.144 measuring 33 Acres, 7 Gunthas and assessed at Rs. 175/- and situated in the village of Gadhinglaj, District Kolhapur, The xxx said land is the paragana Watan land of the applicant.

2.

2. The said land and other property of the applicant were under the management and superintendence of the Court of Wards , Kolhapur till the year 1945. The Court

of Wards during its management used to lease out every year the land in question by public auction and the highest bedder was be accepted by the Court of Wards as their tenant.

3. That after the Court of Wards handed over the land in question and other property to the applicant on his attaining the majority. the southern half of the land in question was leased by public auction to opponent No. 1 for one year certain and the northern half o&o one Laxman Shinde. This mode of leading out the two portions of the land continued upto the cultivating seasom of the year 1947 in which year the southern half was also leased to the aforesaid Laxman Shinde as he offered a higher bid than that of the oppoentm No. 1 . Accordingly since the year 1947 the said Laxman Shinde has been cultivating the land as the yearly tenant of the applicant and opponent No.1 gave up possession of the southern half of the land when his bid for the year 1947 was not accepted. Thereafter opponent N°.1 never set up any right in respect of the southern half of the said land not otherwise disturbed the possession of the said Laxman Shinde who had been accepted as the tenant since 1947.

4. That for the year 1948-49 also the southern half of the land was leased by auction and as the said Laxman Joti was the highest bedder it was continued to him as before.

5. That the B.T. and A.L.Act of 1948 was applied to the District of Kolhapur on the ~~1st~~ 1st of May 1949. the opponent No. 1, taking advantage of the provisions of the said Act made an application (Tenancy Case No.36 of 1950) before the Mamlatdar of Gadhinglaj on 6.1.1950 contending that he and

one Birappa were protected tenant in respect of the southern half and therefore prayed under section 29 of the Act that possession of the said moiety be restored to them. They also contended that the necessary intimation of their willingness to continue upon the land as tenants of the applicant had been given on 22.3.1960 to the applicant as required under section 4 of sub-section the schedule.

6. That on 9.6.1960 the Mamlatdar before whom the application came on for hearing dismissed the application holding that the intimation as required under section ~~4x~~ 4(2) of the Schedule had not been proved to have been duly given. But the Mamlatdar held that the present opponent No. 1 alone was a protected tenant in respect of the southern half of the land.

7. That opponent No.1 and the abovenamed-mentioned Birappa thereafter preferred Tenancy Appeal No. 61/1960 before the Collector of Kolhapur, who on 13.1.1961 set aside the decision of the Mamaldatdar and ordered that the opponent No.1 be put in possession of the southern half of the land in question and declared that he was entitled to hold it on the same terms and conditions on which he was previously cultivating it. In his judgement the Collector held that the opponent no. 1 had resorted to the normal course to serve the notice on the land-lord and that the landlord wilfully evaded the service of notice given by opponent No.1. On the question whether the opponent No.1 and Birappa had been intentionally evicted from the southern half of the land in question, the Collector observed 'From the papers of the case it is seen that the appellant No.1 (opponent No.1 herein) has

61 — 335 — F 27

cultivated the suit land upto 1947 and the suit land was auctioned and given out for cultivation to Respondent No.2 (Laxman Joti Shinde) as he offered more rent than appellant No.1 (i.e. Opponent No.1) thus the surrender of appellant No.1 (oppnent No.1) was not voluntary. In order to have higher rent the landlord gave the suit land to Respondent No.2 and thus precluded him from being on the land which constitutes eviction rather than voluntary surrender.

"In accordance with the provisions of section 4 of the Schedule the appellant has acquired the right of protected tenancy of the suit land as he had cultivated it continuously for six year prior to 1938."

8. That thereafter the applicant made a revisional Application (No. B.R.T. 4829/52) to the Bombay Revenue Tribunal Bombay under section 76 of the act on 30.1.1951. The Bombay Revenue Tribunal by their order No. 0/127 of 1952, dated xxth Jan. 1952 held thatthe view taken by the Collectore as regards the service of notice was correct and accordingly opponent No.1 was entitled to be reinstated on the land.

9. That pending the revisional application made to the Revenue Tribunal, Laxman Shinde who was the yearly tenant of the entire land surrendered his tenancy rights and gave up possession of the entire land on 11.2.1952 in favour of the landlord-applicant. Since then the applicant has been personally cultivating the said land by home farming.

10. That the applicant in view of the subsequent event viz. the surrender of the land by Laxman Shinde, approache the Revenue Tribunal, again by a Review P Petition. The applica also contended in the review petition that in as much as the

63 257 V 279

land was under the management of the Court of Wards till the year 1945, any lease given to the opponent No.1 by the Court of Wards would be a lease outside the purview of the Act and would not therefore entitled the opponent No.1 to contend thathe was holding as tenant of the applicant continuously for a period of six years before 1937. Reliance was also placed upon section 4(3) of the schedule to the Act and it was contended that in as much as the applicant himself was cultivating the land, the provisions of section 4 did not apply and opponent No.1 could not be deemed to be a protected tenant nor entitled to possession under section 4. The Tribunal however dismissed the said application summarily on 27th July 1963 and the intimation of the Tribunals decision was received by the applicant on 22nd September 1963.

11. That feeling aggrieved by the said order of the Revenue Tribunal, Your Lordships Petitioner begs to approached Your Lordships under Articles 226 and 227 of the Constitution of India and also underthe Appellate Revisional and inherent powers of the High Court and prays that Your Lordships may be pleased :-

(a) to send for the Record and Proceedings of the case,

(b) to vacate the aforesaid orders of the Revenue Tribunals (Nos. 0/137 and No. 510/1963 respecting passed on dates 29th Jan. 1962 and 27th July 1963) and of the Collector in Appeal No. 80 of 1961 on 13.1.1961 be set aside and to maintain the order passed by the Mamlatdar Gadhinglaj in Tenancy Case No.36 of 1960.

(c) to issue a Writ of certiorari or any other appropriate Writ directing the Revenue Tribunal, to stay the enforcement of the order passed by it, and

(d) to pass such other further or consequential orders

as may seem fit or proper to Your Lordships in the circumstances of the case on the following among other grounds. :-

(i) That the Revenue Tribunal erred in holding that section 88(1)(a) of the B.T. and A.L.Act did not apply to the land in question.

(ii) That the land in dispute having been entered into the Mahali Mahmadar Khat it did not cease to be Watan Inam land even though no service was tendered The Government has always the right to take service from such Watandars.

(iii) That it was an error to hold that the opponent No.1 was a protected tenant of the land.

(iv) That it was an error to have not taken into account the subsequent even viz. the surrender by Laxman Shinde of the entire S.No. in favour of the applicant and the fact of his personally cultivating the same and of having been in possession thereof.

(v) That it was an error in law to have held that the intimation said to have been sent by the opponent No.1 to the petitioner was properly served on the petitioner although he never received the same.

(vi) That it is an error in law to have inferred that the petitioner deliberately avoided the receipt of the intimation on him by remaining absent in the absence of any evidence in that behalf.

(vii) That it was an error not to have noticed that the opponent No.1 did not himself set up in his application to the Mamlatdar, this case of wilful

obedience of the intimation by the applicant.

(viii) That it was an error to have hâld that order of the Tribunal passed on the revision application by the Applicant was prior to the date of the surrender. in favour of the applicant.

(ix) That it was an error under the circumstances of the case to have hâld that the provisions of Section 4 sub-section (3) of the B.T. & A.L. Act did not govern the facts of the case.

(x) That the applicant has approached Your Lordships without any undue delay.

(xi) That it was an error to have held that the decision of the Tribunal (No.0214 of 1950) could mtx distinguished from the facts of this case.

(xii) That the orders of the Revenue Tribun al are without jurisdiction.

(xiii) That opponent No.1 can't be deemed to be protected tenant either under section 4(1)(a) of under 4(1)(b) of the schedule as the Collector has held that he had cultivated continuously for six years prior to 1938. The section requires continue personal cultivation for six years either from 1st of april 1937 of from 1st April 1944.

(xiv) That the Collector and the Tribunal ought to have held that there was no eviction of the opponent No.1 from the portion of the land in question as required by section 4 of the schedule. The leasehold rights of the land in question used to be auctioned every year by the Court of Wards when it was in management and thereafter by the applicant himself and in the year 1947 as the highest bid was not accepted by the opponent No.1

69 2B3 219

but was accepted by Laxman Shinde, the land was naturally handed over to him after the opponent who could not accepted the bid gave up possession of the same. thus there was no case of eviction at all.

12. That the petitioner further prays that Your Lordships may be pleased to grant a stay of the order of the Revenue Tribunal, confirming the order of the Collector mentioned above pending the decision of thisppetition, in order to maintain the possession of the land in question with the petitioner, otherwise the petitioner will sufer irreparable and substantial loss in as much as he has spent enormous sums in its improvement.

13. No such Application is filed bedore this, in this Court, against the aforesaid orders.

And for this act of kindness the petitioner shall as in duty bound ever pray.

Bombay
Dated 29.9.'53)

Sd/- N.S.Anikhindi.
Advocate for Petitioner.

skd/-
13.10.

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245 217

Review of Tribunal's order No. O.137 of 1962, dated 29th January 1962.

No. O-510 of 1963.

Bombay, 27th July 1963.

Read :

Review application dated nil March 1962 of Shri Murarrao Narshingrao Mutalik Desai of Bambalwad, taluka Chikodi, District Belgaum.

Order

This is an application by Shri Murarrao Narsingrao Mutalik Desai for review of this Tribunal's order No.O-137 of 1962, dated 29th January 1962, rejecting the revision application of the applicant against the order of the Collector of Kolhapur, dated 13th January 1958, holding that the first opponent Shidu Gangaji Khedkar was the sole protected tenant of S.No.344(part) of Gadhinglaj and had sent a notice by registered post to the land lord, the applicant, expressing his willingness under sec. 4(2) of the Tenancy Act of 1939 to take back the land on the same terms as before, but which notice was not accepted by the addressee landlord.

2. It has been pointed out that the property in dispute was under the management of the Kolhapur Darbar and that the tenant, opponent No.1 was placed in possession of by the Darbar before the merger and that the lease having been held from the Crown, the Tenancy Act would not apply and no status of protect tenant was therefore, conferred on the tenant. But is appears that the applicant took back management in 1945 from the Kolhapur Darbar prior to the merger and at the date of the lease the property was not in charge of the Darbar. But there the Darbar was only an agent of the applicant for the purpose of management. It is urged that it was a lease.....

lease from the Crown implying that it was a lease of Crown land is lease of land whose title vested in the Government, uUnless leases made during temperary management by the State Officials of private property on behalf of its owner are specifically exc-pted from the operation of the Tenancy Act as in case of management assuming by Government. under sec.44 of the Act, th lease in the present case cannot be regarded axexempt under Sec.88 from the provisions of the Tenancy Act, The case decided by this Tribunal in its order No.0-214 of 1950 dated 22nd May 1950 (applicant Satappa Gangappa Patil of Konkarhatti, selected Decisions 1950, p.124) is distinguishable on the facts; for in that case the legal estate in the lands was conveyed as security to the State Government. That is not so in the present case.

3. It is also stated that there waxs a surrender of the tenancy by the person when the landlord had placed in possessi as a tenant, the applicant No.2 in the revision application, a 11th January 1952 and that therefore under sec.4(3) of the Tenancy Act 1939 the landlord who haad assumed possession upon surrender since then could not be evicted. But the Tribunalis order was passed on 29th January 1952 which merely confirmed the Collector's order passed before the alleged surrender. Consequently that would not be a ground for review. The other points urged cannot properly be urged for review. This application accordingly summarily rejected.

K.B.Wassoodev.

President
Bombay Revenue Tribunal

N.C.Mansani

Director of Local Authorities,S.P.
and member,Bombay Revenue Tribunal.

R.S.Dikshit.

Non-official Member, Bombay
Revenue Tribunal.

True Copy.
Sd/-
For Secretary,
Bombay Revenue Tribunal.

75 2-4-304

Revision application against the order of the Collector of Kolhapur, dated 13th January 1951, in Tenancy Appeal No. 81 of 1950.

.....

No. B-137 of 1952.
Bombay, 29th January 1952.

Read:
Revision application , dated nil January 1951, of Shri Nararrao Narsingrao Mutalik Desai of Bambalwad, Taluka Chikodi, and Shri Laxman Jeti Shinde of Gadhinglaj.

.....

Order

This is a revision application under section 76 of th Bombay Tenancy and Agricultural Lands Act,1948 by Shri Nararrao Narsingrao Mutalik Desai, the landlord of S.No. 144(part) of Gadhinglaj, and Shri Laxman Jeti Shinde, the present tenant of the said land, against the order of the Collector of Kolhapur, dated 13th January 1951, setting aside the order of the Mamlatdar of Gadhinglaj, dated 9th August 1950, rejecting the prayer of the opponents for restoration of possession of the said land based on the grounds that they were protected tenants and were wrongfully evicted by the landlord before the new Tenancy Act of 1948 came into force in this area of Kolhapur and the landlord had placed the second applicant as his tenant and that the opponent No.1 had given the requisite notice under section 4(2) of the Act to the landlord before instituting this action. The trial court had held that opponent No.1 alone was the protected tenant and he had failed to give notice to the landlord. The Collector, in appeal held that only the first opponent was the protected tenant and that the service of notice by him sent by registered post was evaded by the landlord and that it should be deemed to have been properly served on the latter. That view as regards service of notice is correct in law and the facts found are binding on this Tribunal in revision. Consequently, opponent No.1 is entitled to be reinstated on the land. This application is accordingly rejected.

Sd/- P.J.Ghandy, Non-Official Member, Bombay Revenue Tribunal.

Sd/- Y.R.Parpia. Senior Deputy Secretary- to Govt. of Bombay, R.D.& Member ,B.R.T.

Sd/- K.B.Wassoodev. President Bombay Revenue Tribunal.

"True Copy"
Sd/- Illegible. 20/3/52.
Secretary. B.R.T.

Ten. Appeal No. 81/50.

In the Court of Shri A.S.Rao, I.C.S.,
Collector of Kolhapur.

1. Shri Sidha Gangaji Khedkar,
2. Shri Birappa Mayappa Dhangar
Both of Gadhinglaj. ..... Appellants.

Vs.

1. Shri Nararrao Narsingrao Malik
Desai of Bambalwad, Taluka Chikodi,
residing at Sangli.
2. Shri Laxman Joti Shinde, Gadhinglaj..... Respondents.

Property :- S.No. 144 (half) at Gadhinglaj.

Heard :- Pleaders on both the sides.

ORDER

This is an appeal againstthe order of the Mamlatdar, Gadhinglaj, dated 5-8-1950, requesting to restore possession of the suit land.

The facts of the case, in brief, are as under :-

The appellants on 6.1.50, applied to the Mamlatdar of Gadhinglaj requesting to declare them as the protected tenants of the suit land, and to restore possession of the suit land.

After holding inquiry and recording the necessary evidence the Mamlatdar of Gadhinglaj observed that the appellant No.1 was in possession of the suit land upto 1947 and has therefore recognised him as "Protected Tenant" of the suit land but refused to hand over the possession.

Being aggrieved by the decision of the Mamlatdar the appellant preferred an appeal on the following main grounds :

1. That due notice has been given by them to the owner of the land according to the provisions of section 4(2) of the schedule expressing their willingness to accept tenancy of the land on the old terms; and

2. That they have been intentionally evicted from the suit land.

Ground No.1 -- It is seen from the records of the case that the appellant No.1 had given a notice by registered post to the landlord within the prescribed period to his usual address expressing his willingness to take the land for cultivation on the old terms and conditions. It is also seen from the records that the landlord ordinarily resides at Sangli and conducts some sort of trade at Bambalwad. From the envelope of the registered notice sent by the tenant to the landlord, it is seen thatit was sent to Sangli, his usual address, Chikodi, Hyderabad and to several other places, and lastly it was returned to the sender for want of proper address. The postal authorities seem to have made adequate efforts to find out the address of the landlord.

This appeal was fixed for hearing on 3.1.1951 and notice was sent to the landlord on his usual address to appeal before the Collector by Registered post. The notice was duly served upon him and he was

present in the court on 3.1.1961. I, therefore, hold that the appellant had resorted to the normal course to serve the notice on the landlord. It seems that the respondent wilfully , evaded the service of notice given by the appellant.

Ground No2 :- From the papers of the case it is seen that the appellant No.1 has cultivated the suit land upto 1947 and the suit land was auctioned and given out for cultivation to respondent No.2 as he offered more rent than the appellant No.1. Thus the surrender of appellant No.1 cannot be treated as voluntary. In order to have higher rent, the landlord gave the suit land to the respondent No. 2 and thus precluded him from being on the land, which constitutes eviction rather than voluntary surrender.

In accordance with the provisions of sec. of the schedule the appellant No.1 has acquired the right of protected tenancy of the suit land as he had cultivated it consequently for six years prior to 1938.

I, therefore, allow the appeal setting aside the order of the Mamletdar, Gadhinglaj, dated 9.8.50 and direct that possession of the suit land S.No. 144 (half) of Gadhinglaj should be restored to the appellant No.1 who is entitled to hold it on the same terms and conditions on which he was previously cultivating it.

Sd/- A.S.Bam.

Kolhapur.
13- 1 - 61. Collector of Kolhapur.

Ten. Appeal No.81 of 60.

Collector's Office, Rev.Br.
Kolhapur Jan. 1961.

1. Shri Sidha Gangaji Khedkar,
2. Shri Birappa Mayappa Dhanagar
   Both of Gadhinglaj.
3. Shri Nararrao Narsingrao Mutalik Desai
   of Bambalwad, Taluka Chikodi,
4. Shri Laxman Joti Shinde, Gadhinglaj.
5. The Mamletdar Taluka Gadhinglaj, for information with case papers for record.

Sd/- Illegible.

for Collector of Kolhapur.

S/255

IN THE COURT OF SHRI M.S.DANDAVATIMATH, B.A.

MAMLATDAR OF GADHINGLAJ.

Tenancy Case No. 36/1960.

Applaicant :-

1. Shri Shidu Gangaji Khedkar
2. Shri Dorreppa Mayappa Dhanagar

} of Gadhinglaj.

Opponents :-

1. Shri Murarrao Narshingrao Mutalik Desai of Bambalwad Taluka Chikodi.
2. Shri Laxman Joti Shinde of Gadhinglaj.

S.No.	Area A G	Assessment.	
144	16-24	87-8-0	of Gadhinglaj.

Application under sec. 29 of the B.T. and A.L. Act, 1948.

ORDER

The applicants in this contend that they are protected tenants in respect of half of the southern portion of the land S.No. 144 of Gadhinglaj and that the Karabhari of opponent No.1 evicted them in the year 1947-48 and leased the said half of the land to opponent No.2 who has been cultivating it to date since ~~xxxxxxxxx~~ that time. In view of the facts, they have now approached this court for relief under the Tenancy Act and request for handing over the possession of the said peortion of the said land under sec.29 of the B.T. and A.L. Act 1948.

The points for determination in this case areas under :-

1. Whether the applicants are the protected tenants
2. Whether they were illegally evicted from the land cultivated by them
3. Whether they are entitled to the possession of the land. ?

My findingson point No. 1 is in the affirmative in case of applicant No.1 only. On point No.2 doubtful and on point No. 3 in the negative for the reasons discussed here

83 57 34

The fact that the applicant No.1 is the protected tenant of half of S.No.144 is proved to satisfaction by production of abundant documentary evidence vi z. extracts from crop Regist V.F. VII-XII and the receipts passed by the owner of the land from time to time in token of having received the rent.(Vide Ext.4, 12(1 to 49). The point as regards the legality or otherwise if the ~~xxxxxxxxxxxxxx~~ eviction of the tenant, it is doubtful in as much as ~~xxxxxx~~ evidence proved in that behalf by the applicant No.1 is not sufficient and ~~xxxx~~ satisfactory. As regards the 3rd point as to whether the applicants are entitled to the possession of the land, it is of utmost importance to note whether the provisions of sec.4(2) of the B.T. and A.L. Act 1948 have been duly satisfied.

The applicant No.1 contends that ~~xxxxxxxx~~ issued a notice in writing to the landlord intimating the latter of his willingness to cultivate the land in question on the same terms and conditions that existed prior to 1949 i.e. prior to the date of eviction. It is a fact the the applicant No.1 issued a notice to the opponent No.1(the date of coming into force of the Tenancy Act in this area,) but the said notice was not at all served for want of proper address. Mere issue of notice without its being served on the landlord cannot therefore be said to be valid ~~xx~~ compliance of the provisions of sec. 4(2) of the B.T. and A.L. Act 1948. Hence the applicant is not entitled to the possession of the land in question. Hence the request of the appligant for possession of the land concerned is refused.

Date 9.8.1950.

Gadhinglaj.

Sd/-

MAMLATDAR Gadhinglaj.

"TRUE COPY "

mkd/14.80

85 259 313

Immediate.

No. 21137/6
Legal Department,
Bombay Castle (Bombay No.1), 19th October 1953

To
The Secretary to the Government of Bombay,
Revenue Department.

Subject:- Special Civil Application No. 1812/53.
Shri Murarrao Narsingrao Mutalik Desai
vs.
The Bombay Revenue Tribunal No.1 & Anr.
...

Sir,

I am directed to forward herewith a copy of the petition filed by Shri Murarrao Narshingrao Mutalik Desai in the High Court, Bombay under Articles 226 and 227 of the Constitution ~~m~~ and to request you to forward your remarks with reference to L.D. Circular No. 9585/E, dated 23rd April 1953 very urgently.

Yours faithfully,

RN 19/10
for Secretary to Government. P.T.O.

19/10

Copy forwarded with compliments to the Bombay Revenue Tribunal for necessary action.

cks/19.10.

Award report from RD till 3/10

20/10

LD typs sent to R D with No 22158/E Shri K

2-11-53.

2/11.

Awd with RD remarks

Shri K

No. 8460

87

Office of the
Government Pleader, High Court,
Bombay, 28th October 1953.

From

Shri H.M.Choksi,B.A.(Hons.)LL.B.,
Government Pleader, High Court.

261

To

The Collector of Kolhapur,
At : K O L H A P U R.

Subject:- Special Civil Application No.1812 of 1953.
Shri Murarrao Narsingrao Mutalik Desai -VS- The State of Bombay No.3 and 2 Others ... ...

Sir,

With reference to the subject noted above, I have the honour to send herewith a High Court notice served on me by the High Court, for your information and necessary action.

Yours faithfully,

for Government Pleader, High Court.

L.D. 30 OCT 1953

No. 8461

Bombay, 29-10-1953.

Copy with a Copy of High Court notice in Spl. Civil Applicati No.1812/53 forwarded with compliments to the Remembrancer of Legal Affairs, Bombay for favour of information.

THE SECRETARIAT ... LEGAL DEPARTMENT
File No. 20/43 E
31/10/53

Legal Dept

R.D. may be requested to forward its remarks as requested vide U/S 33 ante immediately

RN
31/10
SG

to L.D. 29/X/53

... 25 ... 4839

Serial No. F 7325(a)

Rec'd on 10

L.D. 16 NOV 1953 ... File No. 3111

27495 13/11/53 E

Rox 31/10

... R.D. 22158 E 2-11-53

R.D. BRT.

Only pages 35-37 have been recd by the L.D. Pages 1-33 have not been recd. The L.D. may be requested to send the pages in order to enable this office to offer its remarks.

AS II ... to L.D. dated 16/11/53

Legal Dept

Attention y. R.D. is invited to
his dept. letter no. 2-11-33/E dated 19-10-53 ex p.19 in H. Pet.
requesting that dept to offer its remarks BRT. 4839
on the petition forwarded with that letter pt C ex p4
this was issued in continuation y their
letter. R.D. has already intimated that
it is not necessary to put in appearance
on behalf y the Govt of the B.R.T. as
no point worth consideration has been
raised. Govt. Pleader, High Court has been ex p. 57 —do—
informed accordingly. In the circumstances
no action on the part y R.D. is
now necessary. R.D. may please see
and return these papers

JDV
17/4
SC/

28460
E
26/11/53

RDN 17/11.

VOR to RD No. 23176/E dt 18th Nov 53

R.D.
BRT

Seen and noted by the L.D.

19.11.53.

BRT 4839
BRT 7512

AS II

L.D.
25 NOV 1953

Regd
Please see
L.D.

22/11/53

Note to L.D. dated 23-11-53. asking for information

RN 26/11

File in Civil Dept A (Tenancy) 53
A. III p.317 SOL RN 26/11

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

SPECIAL CIVIL APPLICATION NO. 1812 OF 1953.
(Under Articles 226 and 227 of the Constitution of India.)

Shri Murarrao Narsingrao Mutalik Desai
of Bambalwad, Taluka Chikodi,
District: Belgaum. ... ... Petitioner.

Versus.

1. Shri Shidu Gangaji Khedkar of
Gadhingla. Dist. Kolhapur

The Bombay Revenue Tribunal by
its President and Members:

2-A:Shri K.B.Wasoodew,
President, Bombay Revenue Tribunal.

2-B;Shri M.G.Monani, I.C.S.,
Director of Local Authorities, S.D.
and Member, Bombay Revenue Tribunal.

2-C;Shri R.S.Dikshit,
Non-Official Member, Bombay Revenue
Tribunal.

3. The State of Bombay. ... ... Opponent.

claim Rs.200/-

No. 2926 Of 1953.

Bombay, 26th 28th October 1953.

From:
The Deputy Registrar,
High Court, Appellate Side,
Bombay.

To be Served on Govt. Pleader.

To:
3. The State of Bombay.*

Sir,

The petitioner abovenamed having presented a petition to this Court praying that the record and proceedings relating to the Order No.O-510 dated 27th July 1953 in Review Application and Order No. O-137 dated 29th January 1952 passed by the Bombay Revenue Tribunal in Revision Application preferred by the Petitioner against the deci-sion of the Collector of Kolhapur in Tenancy Appeal No.81/50 -- against the order of the Mamlatdar of Gadhinglaj in Tenancy Case No. 36 of 1950 be called for and upon perusal thereof the order passed by the Bombay Revenue Tribunal and the Collector of Kolhapur be vacated and the order passed by the Mamlatdar Gadhinglaj in the said Tenancy Case be restored and that pending the final disposal of this application the order passed by Revenue Tribunal confirming the order of the Collector mentioned above be stayed etc., as stated

registered in this Court as Special Civil Application and this Court having on 5th October 1953 ordered Rule to issue, I have the honour to inform you that the hearing of the said application will take place on the 16th day of November 1953 or on any subsequent day which to this Court may seem convenient, and that if no appearance is made on your behalf either by an Advocate of this Court or an agent duly authorised and instructed by you, it will be heard and determined in your absence.

Yours faithfully,
Sd/- S.I. Soloman,
for Deputy Registrar.

Enclosures : One Copy of petition.

... ...

Recd. on 28-10-1953.
⇒ Sd/-
for Govt. Pleader, High Court, Bombay.

Civil A. + A (Tenancy) 3 of IV
L.r.p.s. Regd.
28/11/53 L.D. Pl store urgent
19-11-53.

No. 10035 /K

Office of the
Government Pleader, High Court,
Bombay, 18th December 1953.

From

Shri H.M.Choksi.B.A.(Hons)LL.B.
Government Pleader, High Court.

THE SECRETARY TO GOVERNMENT,

To

The Remembrancer of Legal Affairs,
Bombay.

3110
E
24/12/53

Sub:- Special Civil Application No.2331/53.

Sir,

With reference to the above subject, I have the honour to send herewith a copy of the above application with a request to direct the authority concerned to send his affidavit in reply to the petition (with five copies thereof) along with detailed instructions and original case papers.

This should please be treated as urgent as the above application is likely to be on board on Monday the 4th January 1954.

Yours faithfully,
V. J Desai
for Government Pleader, High Court.

L D
21 DEC 1953

This is a petition filed against an order made by the Member of the B.R.T refusing to grant stay of execution of the order passed by the Mamlatdar and asst .... by the P.O. pending R.A. decision of the appeal filed by him before the B.R.T.

A copy of the petition may be forwarded to R.A. with reference to Ld Civil Circular.

21/12

21/12

93 187

In the High Court of Judicature, at Bombay

Special Civil Application No. 2331 of 1953.

(Under Article 226 and 227 of the Constitution of India)

Bharma Mallappa Malaji.

(Original Tenant) ... ... Petitioner.

Versus.

1. Shri M.G.Monani, I.C.S, Official Member, Bombay Revenue Tribunal, of Belgaum.

(2) State of Bombay. ... ... Opponents.

Claim Rs.200/- for process fees.

From

The Deputy Registrar,
High Court, Appellate side,
Bombay.

To

To be served on Little & Co.

No.3.

The Secretary,
Legal Department, State of Bombay,
Bombay.

No. 108 of 1954.
Date 12-1-1954.

Sir,

The petitioner abovenamed having presented a petition to this Court under Article 226 and 227 of the Constitution of India stating that the order dated 10-9-1953 / 23-9-1953 passed by the Opponent No. 1 is illegal and that pending the final disposal of the above Special Civil Application a rule nisi be issued prohibiting Opponent No. 2 from executing the order of the Prant Officer and the Mamlatdar; etc. as stated in the accompany-ing copy of the Petition, and the same having been registered in this Court and this Court having on 16th December 1953, ordered Rule to issue, I have the honour to inform you that the hearing of the said Petition will take place on the 25th day of January 1954 or any subsequent day which to this Court may seem convenient and that if no appearance is made on your behalf either by an Advocate of this Court or an agent duly authorised

and

and instructed in that respect and show cause why the application as prayed for should not be granted, it will be heard and determined in your absence.

Yours faithfully,

Sd/-

For Deputy Registrar.

GSS/-

95 199

(Dist. Belgaum)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

Special Civil Application

No. of 1953.

(Under Articles 226 and 227 of the Constitution of India)

In the matter of the Bombay Tenancy and Agricultural Lands Act,

A n d

In the matter of the Bombay Co-operative Tribunal

A n d

In the matter of Article 227 of the Constitution of India.

Bharma Mallappa Malaji of Thanahattargi, taluka Hukeri, Dist. Belgaum . . . . . Petitioner. (Ori.Tenant).

V e r s u s

(1) Shri. M.G.Monani, I.C.S., Officiat Member, Bombay Revenue Rebunal, of Belgaum.

(2) Shivalingappa Chanabasappa Tubachi of Yemakanmardi, taluka Hukeri, Dist.Belgaum

Opponents (Ori.No.2 landlord).

Claim Rs.200/- for process fees.

The humble petition of the petitioner abovenamed,

Most Respectfully showeth :-

1. That opponent No.2 is the owner of R.S.No.217 measuring A/G 6-5 and assessed at Rs.10-7-0 of Thanahattatgi and the petitioner is the protected tenant. On 25.3.1948 the opponent No.2 gave a notice to the petitioner requiring

ing him to give up the possession of the suit land at the end of 1948-49, as he required it for personal cultivation .Thereafter he filed case T.N.C.238 for recovery of the possession of the said land. The Petitioner then contended that he did not require it for bonafide personal then cultivation and that he was a merchant and money lender and he did not own agricultural implements and cultivates lands personally. On 28-6-1949, the learned Mamlatdar held that Opponent No.2 did not bonafide required the suit land for self cultivation and therefore dismissed the suit. As against the said order Tenancy Appeal T.N.C.A.P.No.93/49 was filed and the learned Prant Officer on 1-9-1949 directed that the land be restored to the landlord who required the same for personal cultivation and had duly terminated the protected tenancy of the petitioner. Thereafter a revision Application was filed to the Bombay Revenue Tribunal which is No.C.160 of 1950. Then on 19-4-1950, the Tribunal held "It is strange that the Prant Officer should have lightly disturbed the well considered finding of fact of the Tenancy Aval Karkun, who had opportunity of seeing and hearing the witnesses ----. There were also circumstances noted by Tenancy Aval Karkun which mitatated against the bonafides of landlords' claim. It..... this order is therefore set aside and that of the Aval Karkun restored and this application allowed ".

II. Thereafter the opponent No.2 gave another notice on 22-3-1951 terminating the tenancy of the petitioner and filed Suit No. TNC.Suit No.10/1952-53, in the Court of the Extra Aval Karkun, Nukeri, for possession of the suit land on the very same ground that the land was required by him for bonafide personal cultivation. The Petitioner raised various substantial defences and amongst others they were that the

97 44 VII

suit filed previously on the very ground had been dismissed by the Tribunal and that the lands were not at all required for bonafide personal cultivation and at any rate the notice was not in accordance with law.

III. That the learned E.A.K. on 28-1-1953 over-ruling all the contentions of the petitioner has ordered the possession of the suit land be delivered to plaintiff, as was required for bonafide personal cultiva-tion. The Petitioner filed appeal T.N.C.AP.24/1953 and the learned Prant Officer Chikodi by his order dated 27-6-1953 dismissed the appeal. The Petitioner therefore filed a revision application to the Bombay Revenue Tribunal and the same is admitted and pending. Amongst others it has been contended that the present suit was not maintainable in view of the previous deicision between the same parties, regarding the same subject matter and on the same grounds. Further as the notice does not terminate the tenancy, the suit was untenable.

IV. That the petitioner therefore filed an application on 17-8-1953 for the stay of the execution of the order passed by the lower Courts. The learned official Member of the Bombay Revenue Tribunal on 10-9-1953 rejected the said application on 10-9-1953. Thereafter on 17-9-1953, the petitioner filed an application for reconsideration and review on the ground that there were substantial question involved in the revision application and the very basis of the suit namely the notice being bad, the opponent No.2's suit would have to be held untenable However the learned Official member of the Tribunal on 23-9-1953 rejected the prayer for interim stay on 23-9-1953.

V. That under section 76(2) of the B.T.& A.L. Act rules known as "The Bombay Tenancy & Agricultural Lands (Tribunal procedings) Rules 1949 have been made Rule 7 reads thus :- "Pending a decision on an appeal or an application for revision made to the Tribunal, the (Official Member) may direct execution of any award or order against which the appeal or application is made to be stayed on such condition, as he thinks fit." According to this various rules made every order, when it is to be finally passed must be passed all the Members together. According to the rule No.7, the official member has power to grant stay but not reject the application totally. Every final order of the tribunal on any application must be approved by all members. Then only that will be order of the tribunal. Therefore the official member in rejecting the application has acted in excess of his jurisdiction. Further according to rule 25, the tribunal has to follow the procedure laid down under the C.P.Code. In this case the Opponent No.1 has entirely ignored the provisions of O.4, 5 C.P.C.

VI. That therefore the opponent No.1 has committed an obvious error in rejecting the application. In view of the said order, the opponent No.2 will try to obtain possession of the property from the petitioner. The Petitioner being a protected tenant has been subjected to great hardships. The petitioner is left with no expeditious remedy to prevent the opponent No.2 from executing the illegal order of the lower Courts and thus causing irreparable loss to the petitioner.

VII.That the petitioner therefore approaches. Your Lordships under Article 227 of the Constitution of India for a declaration that the order passed by opponent No.1 is illegal and the petitioner prays for issue of appropriate writs against opponents, on the following among other

99 193

grounds :-

(1) That the order passed by opponent No.1 is contrary to law and without jurisdiction.

(2) That the opponent No.1 had no jurisdiction to dismiss the application, in view of the clear rules framed to that effect.

(3) At any rate, the opponent No.1 has not at all applied his mind and considered the facts and circumstances of this case. The Petitioner is a poor agriculturist, who has been declared to be a protected tenant and the proceedings once taken by the landlord on the very ground had been dismissed and as there were substantial questions to be considered. The revision application was admitted and pending. The circumstances clearly show that the learned Prant Officer has failed to exercise the jurisdiction vested in him by law.

(4) That in the case the requirements of O.41 r.5 C.P.C. were fully fulfilled and therefore there was a fit case where the lower Court ought to have granted the stay order.

(5) That the opponent No.1 has approached the whole case from an erroneous view of law.

(6) That irreparable loss would be caused to the petitioner, if opponent No.2 executes the order. Therefore, it is in the interest of justice that the Court should inferfere under Article 227 to prevent the wrong from being committed.

VIII. That the petitioner further prays that pending the final disposal of this petition, a rule nisi be issued prohibiting opponent No.2 from executing the order

of the Prant Officer and the Mamlatdar.

IX. That in the circumstances, the petitioner prays :-

(i) that it be declared that the order passed by opponent No.1 is illegal and not binding on the petitioner.

(ii) that appropriate writ or writs be issued prohibiting opponent No.2 from obtaining possession of the property in suit.

(iii) That such order or orders as Your Lordships deem it fit be passed.

No such application is filed before this, in this Court against the said order.

And for this act of kindness the petitioner shall as in duty bound ever pray.

Bombay)
Dated 10-11-1953)

Advocate for Petitioner.

Civ # A (Tenancy)/53
pt I
with M/J

Immediate.

No. 122-E

Legal Department,
Bombay Castle (Bombay No.1), 4th January 1954.

To

The Government Pleador,
High Court, Bombay.

Subject:- Special Civil Application No. 2331/53.

Sir,

With reference to your letter No. 10035, dated the 18th December 1953, on the above subject, I am directed to state that Government does not consider that appearance on behalf of the Bombay Revenue Tribunal or Government is necessary.

Yours faithfully,

for Secretary to Government.

Copy forwarded with compliments to the Revenue Department for information.

BM.
4.1.

LDRI 113.
4/1/54

RD ppns returned to that
Deptt with No 177-E dt 5th Jan 54

issued
C.S.T
5.1.

File in Civil AA (Tenancy) /55
part V

BW.
6/1

Civil AA (Tenancy) /55
pt V
7/1/54

337

	Rs.as.ps.	
..pying and Comparing charges.	1-14-0 (Fls.5)	Typed by : V.D.Shah.
Paper charges.	0- 0-3	Compared by : G.S.Desai.
	------	Read by : D.R.Gokarn.
Total Rs.	1-14-3	

Total Rupee one, annas fourteen and pies three only.

Superintendent,
Decree Department.
25-8-1953.

15-7-53
25-8-53
4-9-53

Special Civil Application No.171 of 1953.

(Under Articles 226 and 227 of the Constitution of India).

Neelkanthrao Amingouda Sardesai (Orig.Applicant)..Petitioner

versus

Basangouda Channangouda Patil and others.

(Original Opponents)... ... ...Opponents

Application praying that a Writ of Certiorari under Articles 226 and 227 of the Constitution of India be issued to quash the Order No.0-656 of 1952 dated 7-7-1952 of the Bombay Revenue Tribunal in the Revision Application prefe--rred against the order dated 25th September 1950 of the Collector of Bijapur preferred against in the order dated 23-8-1950 of S.N.Pattanshetti, Esquire, Mamlatdar of Hund--gund in Tenancy Case No.19 of 1949-50, etc.

Mr. N.M. Hungund, Advocate for the Applicant.

Mr. K.G. Datar, Advocate for Opponents Nos.1 to 3.

The Government Pleader for Opponents Nos.4 to 7.

Coram: Chagla, C.J. and Dixit, J.

2nd July 1953.

Oral Judgment (Per Chagla, C.J) :-

This is a petition challenging the decision of the Revenue Tribunal which was given on the 7th July 1952. The petitioner who is the landlord obtained an order for eject--ment of his tenants, the opponents, from the Mamlatdar, and the ground for ejecting them was that they had failed to pay rent for four years. The order of the Mamlatdar was confirmed by the Collector and the tenants went in revision

to the Tribunal.

Mr. Humgund wants to satisfy us that there is an error apparent on the face of the record as far as the Tribunal's order is concerned. In our opinion, inasmuch as the decision of the Tribunal was given onthe 7th July 1952 and the petitioner has come to this Court on the 19th January 1953 and has not given any explanation for delay, we should not interfere with the decision of the Tribunal. In this particular case there is another important reason why we should not condone the delay on the part of the petitioner. The opponents are tenants, they have been on the land, Mr. Datar tells us, for nearly 20 years, and their only fault was that they had failed to pay rent. We are informed by Mr. Datar that after the order of the Mamlatdar they offered to pay the rent to the landlord but the landlord would not accept it. Under these circumstances we do not think that we should exercise our discretion in favour of the petitioner, even assuming that he is in a position to satisfy us that the order of the Tribunal is erroneous.

The petition dismissed. No order as to costs.

By Order of the Court,

Sd. V.R. Gadkari.

Deputy Registrar.

True Copy.

For Deputy Registrar.

The 25th day of August 1953.

K.337.

	Rs.as.ps.	
Copying and Comparing charges.	1- 2- 0	(Fls.3)
Paper charges.	0- 0- 3	
Total Rs.	1- 2- 3	

Total Rupee one, annas two and pies three only.

Typed by : V.D.Shah.
Compared by : G.S.Desai.
Read by : D.R. Gokarn.

105

Superintendent,
Decree Department.
25-8-1953.

15-7-53
25-8-53
4-9-53

In the High Court of Judicature at Bombay.

Order passed by the High Court in the case of :

1. Neelkanthrao Amingouda Sardesai
(Original Applicant)... ...Petitioner;

versus

1. Basangouda Channangouda Patil; 2 Rudrawwa kom Channangouda Patil; 3 Sangangouda Channangouda Patil; 4. K.B. Wassoodew; President, Bombay Revenue Tribunal, 5. Y.R.Parpia, Member, Revenue Tribunal; 6 R.S. Dixit, Member, Revenue Tribunal; 7 State of Bombay.

(Original Opponents)... ... ...Opponents.

HIGH COURT APPELLATE SIDE
CERTIFIED COPY
BOMBAY

Being Special Civil Application No.171 of 1953 (Under Articles 226 and 227 of the Constitution of India).

Mr.N.M. Hungund, Advocate for the Applicant.

Mr.K.G. Datar, Advocate for Opponents Nos.1 to 3.

The Government Pleader for Opponents Nos.4 to 7.

Coram: Chagla, C.J. & Dixit, J.

For the reasons stated in the accompanying Judgment, the Court discharges the rule. No order as to costs.

Sd.V.R.Gadkari.
31/7.
Deputy Registrar.

2-7-1953.

Bill of Costs in the High Court.

By the Applicant.	Rs.as.ps
Stamps for Application.	5- 0- 0
Stamps for copies of Orders.	1- 4- 0
Stamps for Vakalatnama.	2- 8- 0
Bhatta for process.	.8-12- 0
Sectioner's Fee.	4- 1- 0
Advocate'sFee.	45- 0- 0
Surcharge.	11- 4- 0
Total Rs.	77-13- 0

By Opponents Nos.1-3.	Rs.as.ps
Stamps for Vakalatnama.	2- 8- 0
Advocate'sFee.	45- 0- 0
Surcharge.	11- 4- 0
Total Rs.	58-12- 0

By Opponents Nos.4 to 7.	Rs.as.ps
Stamps for Vakalatnama. (G.P.appears).	0- 0- 0
Advocate's Fee.	45- 0- 0
Surcharge.	11- 4- 0
Total Rs.	56- 4- 0

(Seal)

Sd. V.R. Gadkari.

Deputy Registrar.

The 2nd day of July 1953.

True Copy.

For Deputy Registrar.

The 25-12 day of August 1953.

79 ~~89~~ 107

No. 2312

Office of the
Government Pleader, High Court,
Bombay, 12th March 1953.

From

Shri H.M.Choksi.B.A.(Hons)LL.B.
Government Pleader, High Court.

To

The Secretary,
Bombay Revenue Tribunal, Bombay.

Subject:- Spl.Civil Application 425/53.,
Gururaj Hanmantrao Kalghati Vs.
The Bombay Revenue Tribunal & ors
...

Sir,

With reference to the above subject, I have the honour to send herewith a copy of the above application with a request to send me affidavit of the authority concerned in reply to the petition if necessary (with 5 copies thereof) along with detailed instructions and case papers.

The above application will come up for hearing on Monday the 6th April 1953 or thereafter.

Yours faithfully,

sd/- V.S.Desai

for Government Pleader, High Court.

No. 2313

Copy along with the copy of the above application forwarded with compliments to the Remembrancer of Legal Affairs, Bombay for favour of information and necessary instructions.

6759

V. J. [illegible] 6/17/53

For Government Pleader, High Court.

LEGAL DEPARTMENT
14 MAR 1953

Subj
A copy of the Petition may be
forwarded to Coll. for report

RDN
7/3
Sol

RDN 17/3

Opponent No.1 did not pay Rs.73-13-3 being part of the rent due for 1947-48 and paid nothing out of Rs.110 in rental amount due for 1948-49.

2. The guardian of the applicant therefore gave him a notice by registered post saying that he had failed to pay the due rent for two years and that therefore steps should be taken to evict him from the land if he did not pay the amount due for 1947-48 and 1948-49. In spite of this notice, Opponent No.1 failed to pay the amount due and the applicant's guardian filed Tenancy Case No.330 of 1949-50 on 20-10-1949 for evicting the Opponent No.1 in case the Opponent No.1 did not pay up all the dues.

3. The learned Tenancy Aval Karkun who heard the case passed an order on 14-11-1949 saying that the Opponent No.1 should pay up Rs.167-10-6 within 10 days from the date of the order and if he failed to do so, his rights as a protected tenant would be put an end to. Intimation of this order was given to the Opponent No.1 and he even put in an application on 26-11-1949 saying that the time to pay up the dues should be extended by one month. He did not pay up even during the further period of one month. The applicant's guardian, therefore, filed another application with the Tenancy Aval Karkun saying that the Opponent No.1 had failed to pay the dues and that therefore the conditional order of/terminating the tenancy rights be made absolute and the Opponent No.1 be evicted. The learned Tenancy Aval Karkun passed an order on 17-1-1950 to the effect that "Termination of his tenancy is and absolute". (Exh)

4. The applicant's guardian then filed an application on 11-3-1950 for ejecting the Opponent No.1 from the land in suit (Tenancy Case No.330 of 1949-50. This application was

3
109

In the High Court of Judicature at Bombay
Civil Application No., of 1962.
District Dharwar.

Gururaj Ramrao Kulkarni, Hindu minor by guardian Chandrao Gururao Kulkarni, Hindu, 40, Agriculturist, of Budihal, Taluka Bagalkot, District Bijapur, now residing at Dharwar ... Applicant

Vs.

Bakhtsaa Rustumsa Jamadar, 39, Muslim, Agriculturist, of Chandanmatti, Taluka and District Bijapur, now Dharwar

2. K.D. Manoodon, Retired Judge of this Honourable Court, President of the Bombay Revenue Tribunal, Bombay, residing at Bhulabhai Road, (Warden Road) Bombay

3. V.C. Parpia, I.C.S., Deputy Secretary, to Government of Bombay, Secretariat, Fort, Bombay.

4. R.S. Dixit, Advocate (O.S.), High Court, Fort, Bombay. ... Opponents

Application under Article 227 of the Constitution of India

Revision Application to be numbered and posted 2612

The humble petition of the petitioner-abovenamed.

Most respectfully sheweth:-

That the minor applicant is the owner of the Survey Nos. 71/2, area 7-12, assessment 19-2-0, situated in Chandanmatti, Taluka and District Dharwar. His guardian had let out the said land to Opponent No.1 on annual rent of Rs.110/- under a Kabulyat for one year. The

rejected by the learned Mamlatdar of Thane on the ground that the Tenancy Awal Karkun's order was not one as contemplated by the Bombay Tenancy and Agricultural Lands Act and also on the ground that he had ordered the Opponent No.2 to pay excessive rent and that the Opponent No.1 had already paid the reasonable rent fixed by the Mamlatdar thereto the Talathi of Chandansheti, under receipt Exhibit 2-A (Ex 8)

5. The Applicant's guardian filed an appeal against the order in the Court of the Collector of Thane. The learned Collector held that the Opponent No.1 was bound by the order of the Tenancy Awal Karkun, dated 14-11-1949 and 17-1-1950, that if he felt aggrieved by that, he already ran to file an appeal against then to the Collector, under Section 74 of the Tenancy Act and that the so-called receipt, Ex.2-A referred by the Mamlatdar was irrelevant. He therefore reversed the order of the Mamlatdar on 6-2-1951, and directed that possession of the land should be delivered to the applicant. (Ex 2)

6. The so-called receipt, Exhibit 2-A is not only an irrelevant document, but a very suspicious one and no binding on the applicant in any way. When the applicant guardian filed Tenancy Case No.600 of 1949-50 on 20-10-1949 he filed at about the same time an Assistance suit under Section 86 of the Land Revenue Code in the Mamlatdar's Court, for recovering Rs.210/- the rental due for 1948-49. The learned Mamlatdar, who did the said suit (Suit No.83 of 1948-50) held on 16-3-1950 that the rent of Rs.210/- was very high and purported to fix a reasonable rent at Rs 40-4-8 without giving any opportunity to the applicant to be heard. The Opponent No.1 purported to take the receipt

from the village Officer

~~for the Vahivatdar~~ of Chandankatti on 14-8-1950 ~~that~~ the Vahivatdar has no authority to receive such rental amount. Moreover the so-called receipt Ex.2-A does not specify what amount was actually received and there is a deliberately vaguely worded recital that whatever rental was due had been paid off". The amount however that it was, has never been paid to the applicant as yet nor has been informed as to what the amount was.

6. Against this order of the Mamlatdar fixing Rs.60-8-0 as the reasonable rental the applicant filed an appeal to the Collector under section 74 of the Tenancy Act. The learned Assistant Collector who heard the appeal, reversed the Mamlatdar's order on 14-9-1950 and remanded the case for fixing fair rental after giving an opportunity to both parties to lead their evidence. (Ex F) The Mamlatdar thereafter again heard the matter and on 11-4-1951 has fixed Rs.115 as the fair and reasonable rent and has ordered that assistance to the extent of Rs.90/-(Rs.115 minus Rs.20/-paid by the Opponent for land Revenue) (Ex G)

8. Long after the Assistant Collector had reversed the Mamlatdar's order in Assistant Suit No.83 of 1948-49 on 14-9-1950 and remanded the suit and just a few days before the Mamlatdar after re-hearing, fixed Rs.115/- as the reasonable rent, the Opponent No.1 filed an application on 8-4-1951, being Revision application No. R.R.T.6167 against the order of the Collector dated 7-5-1951, before the Revenue Tribunal in this Revision Application Ex H the Opponent No.1 deliberately made false statement and unfortunately for the applicant, the Revenue Tribunal, without giving the applicant any opportunity to be heard, has reversed the Collector's order on 20-7-1952 (Ex I) on absolutely wrong assumptions. Intimation of the said order was given to the applicant through post by their letter dated 3-8-1952 (Ex J) and the same has reached the applicant in the first week of September 1952.

9. Being aggrieved by the said order of the Bombay Revenue Tribunal the applicant humbly begs to approach this Honourable Court under ~~Section~~ Article 227 of the Constitution of India on the following grounds among others:-

(1) The order of the Bombay Revenue Tribunal is contrary to law and evidence on the record.

(2) The said order is based entirely on wrong presumptions and assumptions and grave injustice has been caused to the applicant.

(3) It was an error to have passed that order without giving an opportunity to the applicant to be heard through his Advocate.

(4) The procedure adopted by the Revenue Tribunal has ~~erred~~ ended in a serious miscarriage of justice.

(5) It is an error to have relied on the entirely false allegations made by the Opponent in his Revision application, though they were controverted in the written statement of the applicant, particularly the following:-

(i) That the Mamlatdar had fixed Rs.40-4-3 as maximum rent, though this order had been reversed by the Assistant Collector and the case remanded for fresh trial on 14-9-1950.

(ii) That the Opponent was not informed of the order of the Tenancy Awal Karkun dated 14-11-1949 to pay up Rs.167- 0-6 within 15 days, ~~though~~ though he himself put in an application on 22-11-1949 requesting for one month's time to pay up the amount and never disputing the amount to be paid, and

(iii) that the Collector had not taken into consideration that Rs.40-4-3 had been fixed by the Mamlatdar as maximum rent though the Assistant

has clearly stated in his Judgment re: this contention (for his having paid to the Vehivetdar is wholly irrelevant...moreover the order of the Mamlatdar passed in the Assistant Suit has been set aside by the Assistant Collector in Appeal and the case has been remanded to the Mamlatdar for fresh hearing".

(6) It is an error to say that the Tenancy Aval Karkun had merely terminated the tenancy instead of directing the restoration of possession of the land to the landlord.

(7) It is an error to say that there orders of the Tenancy Aval Karkun were merely interim and no final order had been passed in the case.

(8) It is an error to say that the Collector should have regularised the proceedings in Appeal by the landlord but that he had not done so.

(9) It should have been held that the Collector's order in Appeal passed on 7-3-1951 in fact had regularised the whole proceedings by ordering restoration of the land to the applicant and that nothing ~~then~~ written remained to be done.

(10) It is an error to say that the orders of the Tenancy Aval Karkun were irregular and that the same could not be executed in those proceedings.

(11) It is an error to say that the ~~appeal had~~ applicant had already received the rent note for 1948-49 though he had not received anything as yet and though he has not even been informed as to that amount he is going to receive

(12) It is an error to say that there was no necessity to remand the case for passing a proper preliminary order under Section 29 of the Tenancy Act, in case the Tribunal were of the view that a proper preliminary order had not been passed already.

10. Under the circumstances the applicant humbly

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prays that this Honourable Court be pleased to exercise its powers of supervision over the Bombay Revenue Tribunal under Article 227 of the Constitution of India to call for the record and proceedings of the case, to set aside the order of the Tribunal and restor that of the Collector of Thar-ar, by issuing a Writ of Certoirori or any other suitable Writ or directions.

And for this act of kindness the petitioner as in duty bound shall ever pray.

Bombay.
9-12-1952.

Sd/ V V Albal
Advocate for the petitioner

I, Gumrao Gururao Kulkarni. guardian of the minor petitioner do hereby state on solemn affirmation that that is stated above is true to the best of my knowledge and belief

Bombay.
9-12-1952.

The contents are
interpreted to the
deponent.

Advocate, High Court.

I know the deponent
Gumrao Gururao Kulkarni.

Clerk to Mr. A.A.Albal,
Advocate, High Court.

117 117 99

Subject:-Special Civil Application 425/53 Gururaj Hanamantrao Kalaghatgi.

Vs.

Bombay Revenue Tribunal & Ors.

No.TEN.AP.5.
Dharwar: 5/5/1953.

LETTER.

To

The Government Pleader,
High Court Bombay.

Reference:-Your letter No.2988 of 8/4/53.

I enclose herewith the papers of the case in 4 files along with necessary replies received from the Dist. Govt.-Pleader Dharwar under his No.351 of 2/5/53 in compliance with the allegations made by the applicant. I have no further remarks ~~ma~~ in the matter. Receipt of the papers may please be acknowledged at an early date.

Sd. M.R.Yardi
for Collector, Dharwar.

LEGAL DEPARTMENT

8 MAY 1953

Copy with a copy of the letter received from the D.G.P. Dharwar under his No.351 of 2-5-53 submitted to the Secretary to Government Legal Department with reference to Government Legal Dept. No.5526/E of 20/3/53.

for Collector, Dharwar.

SECRETARY TO GOVT.
LEGAL DEPARTMENT

File No. 1126 & 9
Sub No. E
Ref. 9/5/53

LD

475/13

Submitted for information

MCP
9/5
SOS

Have we received any remarks from the Tribunal & R.D.

BN --- 9/5

No sir
MCP
11/5
SOS

Some remarks may be awaited

BN --- 14/5

Letter

No. 357 dated 2nd May April '53,
Office of the Dist Govt Pleader,
Dharwar.

To

The Government Pleader,
High Court, Bombay.

Subject :- Civil Application No.425 of 1952.

Reference your letter No.2983 dated 8-4-1953 addressed to the Collector of Dharwar,

We have gone through the papers and wish offer the following remarks :-

Statements made in paras 1 to 6 of the High Court Civil Application are substantially correct.

Regarding the statement made in para 6 of the application that the receipt Exh.2A is both a irrevelant and a suspicious document, I have to state that Exh.2A is neither irrevelant nor suspicious. The learned Mamlatdar in Assistant Suit No.83/48-49 dated 16-3-1950 came to the conclusion that the reasonable rent for the land in question was Rs.40-0-3 and ordered that the amount that still remained to be paid after the payment of assessment should be recovere The order was sent to the Village Officers of Chandan, matti they gave a receipt in question after receiving the amount as per the orders of the Mamlatdar The fact that the amount of the money received was not mentioned in the receipt does not make any difference as the amount received was necessarily the amount ordered by the Mamlatdar. The document is not irrevelant because it showed that whatever the tenant had to pay on the basis of reasonable rent he had already paid and was not therefore liable to eviction. The village officers had not only the right but were under a duty to receive the rental amount decreed in the Assistance Suit.

The statements in para 7 of the application are correct.

The statements in para 8 of the application solely concerned the opponent 1 and it is not therefore

not necessary for Government to offer any remarks regarding these allegations.

Para 9 is divided into sub-paras 1 to 12 and sub-para 5 is again divided into clauses (i) to (iii). The references hereafter will be to the sub-paras or main para 9.

Sub paras 1,2 - These are general impeachments of the B.R.T.Order andno specific reply is called for.

Sub-para 3 - A notice of the application to the B.R.T. was in fact served upon the applicant and he has put in his written statement also. That appears to be sufficient.

Sub-para 4 - No remarks.

Sub-para 5 - The statements in all the three clauses relate only to the statements made by opponent 1. Hence no remarks regarding their correctness or otherwise are called for.

Sub-paras 6,7,8 & 9 & 10 - This is a matter of interpretation of the orders actually passed by the Tenancy Aval Karkun and by the Collector in the matters that were respectively before them. All the orders concerned are in the papers. It appears that the order of the Tenancy Aval Karkun was defective in so far as it failed expressly to award possession of the land to the landlord in case of failure by the tenant to pay the amount decreed against him within the time limited by the order.

Sub-para 11 - The amount of Rs.20-3-3 which was received by the Village officers of Chandammatti as per the Assistance Suit decree of the Mamlatdar was remitted to the applicant by Money Order (Vide page 90 of file No.A.S.T.83/48-49, 49-50). We are unable to say from the papers whether he received or refused the amount.

Sub-para 12 - It wasa matter completely within the descretion of the B.R.T. whether to remand the case or to decide it finally. The applicant cannot question its descretion.

Regarding sending of an affidevitx I do not see that there are any allegations made by the plaintiff against Government officers which require to be refuted. Almost all the statements except those which refer to opponent No.1 only are based upon

Government orders made by the revenue officers such as the T.A.K., the Mamlatdar, Assistant Collector, the Collector and the B.R.T. which are among the papers.

I would also request you to apply your mind and consider the question as to whether in a proceeding before the High Court challanging an order of the B.R.T., the members of the B.R.T. itself can be properly impleaded as opponents. It is a matter of common knowledge that the judges whose judgments or orders are challanged before the High Court in an appeal or other proceedings are never joined as party respondents.

Moreover none of the officers that made any of the orders which are concerned in the present proceeding are at Dharwar for swearing to an affidevit.

Copy of revision application along with its accompaniments and the case papers in original in three files are sent herewith.

B. a. Mahishi
Dist. Govt. Pleader.

Submitted through the Collector of Dharwar.

Immediate.

No. 4590

Office of the
Government Pleader, High Court,
Bombay, 18th June 1953.

From,

Shri H.M.Choksi.B.A.(Hons)LL.B.
Government Pleader, High Court.

To

The Collector of Dharwar,
at Dharwar.

SECRETARY TO GOVERNMENT
PARTICULAR
15087
E
22/6/53

Subject:- Spl.Civil Appln.No.425/53.

Sir,

May I draw your attention to this office No.2966,dt 7th April 1953 and request to expedite the matter. The above application is fixed for hearing on Monday the 29th instant and no further adjournment is likely to be obtained in the above matter.

The original papers received from you are returned herewith and the same may please be returned along with the affidavit.

Yours faithfully,

Sd/- V.S.Desai.

for Government Pleader, High Court.

IMMEDIATE.

No. 4589

Copy forwarded with compliments to the Remembrancer of Legal Affairs, Bombay for favour of information and necessary instructions, in continuation of this office No. 2313, dt. 12th March 1953

V. J. Desai

for Government Pleader, High Court.

Legal Department,
Bombay

20 JUN 1953

No. 13475/E

Legal Department,
Bombay Castle (Bombay No.1), 24th June 1953.

To

The Government Pleader,
High Court, Bombay.

Subject:- Spl. Civil Application No. 425/53
Gururaj Hanmantrao Kalghati
vs
The Bombay Revenue Tribunal and Ors.

Sir,

With reference to your endorsement No. 4589 dated the 18th June 1953, on the above subject, I am directed to request you to return the B.R.T. file No. 5187 forwarded with this Departmen letter No. 6292/E, dated the 4th April 1953, to consider the question of your appearance on behalf of the Tribunal.

Yours faithfully,

for Secretary to Government.

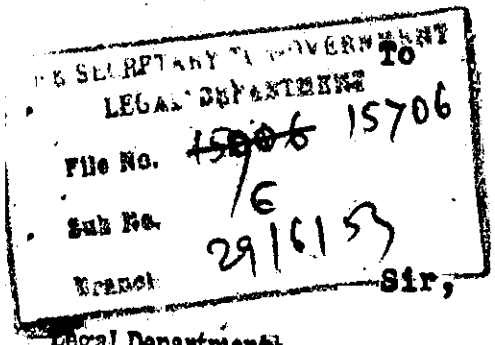
BM.
23.6.

No. 4769

Office of the
Government Pleader, High Court,
Bombay, 25th June 1953.

From

Shri M.M.Choksi.B.A.(Hons)LL.B.
Government Pleader, High Court.

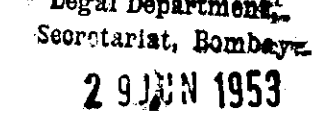


To

The Remembrancer of Legal Affairs,
Bombay.

Subject:- Spl. Civil Application No.425 of 1953.

Sir,



With reference to your letter No.13475/E, dt. 24th June 1953, on the above subject, I have the honour to return herewith B.R.T.File No.5187, received under your reference No.6292/E, dt.4th April 1953.

Yours faithfully,

V. J Desai

for Government Pleader, High Court

RD Nos returned to RD as requested.

with No. 139 99 12

No. 5222

Office of the
Government Pleader, High Court,
Bombay, 15th July 1953.

SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
File No. 1714/E
Date No. 15/7/53

From

Shri H.M.Choksi.B.A.(Hons)LL.B.
Government Pleader, High Court.

To

The Remembrancer of Legal Affairs,
Bombay.

L.D.
15 JUL 1953

Subject:- Spl.Civil Application No.425/53.

Sir,

With reference to your letter No.13475/E, dt.24th June 1953, on the above subject, I have the honour to request you to send me instructions at an early date as the above application is coming up for hearing on Monday the 20th instant.

Yours faithfully.

V.S.Desai

for Government Pleader, High Court.

Legal Dept

R.D. may be requested to state whether appearance on behalf of the B.R.T. is necessary in view of G.D. circular No. 9558/E dated 23-4-53. If appearance is necessary this Deptt may be requested to forward the B.R.T. file to this ~~for~~ being forwarded the G.P. High Court. As the matter is fixed up for hearing on 20/7/53, ~~the~~ matter this may be treated as immediate.

25/7 SOL

RON 15/7

~~133~~ 131
113

Subd.

R.D. ~~Mehta~~ that appearance on behalf of the B.R.T. is not necessary in C.A. no. 425 of 1953. Ld. High Court may be informed accordingly

PTN
16/7
Sol

Ran. 16/7

No. 15326/E

Legal Department,
Bombay Castle (Bombay No.1), 18th July 1953.

To

The Government Pleader,
High Court,
Bombay.

Subject:- Spl.Civil Application 425/53.
Gururaj Hanmantrao Kalghati Vs.
The Bombay Revenue Tribunal & Ors.

Sir,

With reference to your letter No. 5222 dated the 15th July 1953, on the above subject, I am directed to state that Government considers that appearance on behalf of the Bombay Revenue Tribunal is not necessary.

Yours faithfully,

for Secretary to Government.

BM.
18.7.

B/c 134

RD Mo returned with no. 15434/E

dated 21-7-53

(with BR T/ph no. 5707)

Issued 27/7

Submitted

File in civ. M.A. - Terrace / 53

Sm
27/7

SS. 27/7